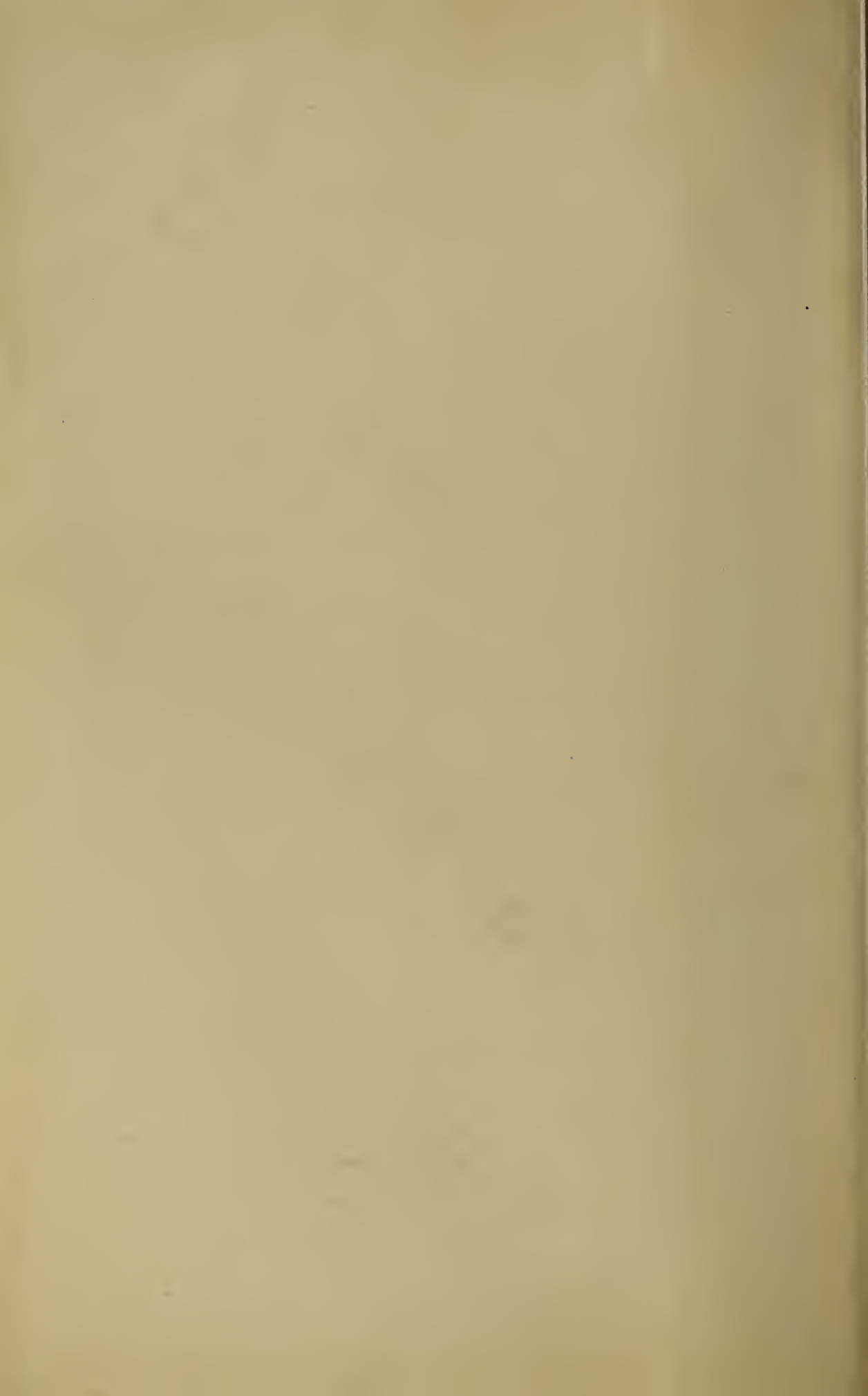
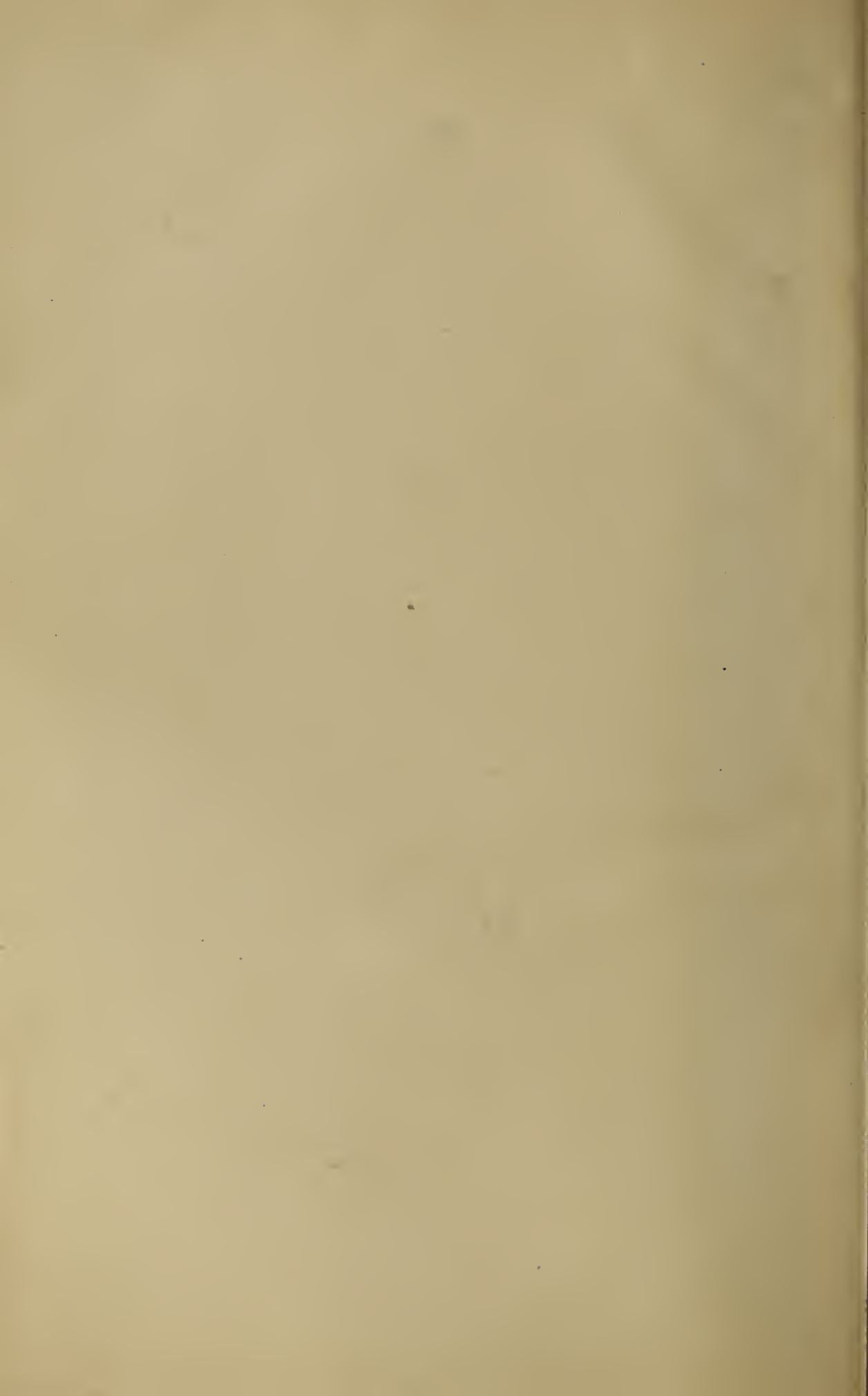


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THE MEDICO-LEGAL JOURNAL.

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PUBLISHED UNDER THE AUSPICES OF THE MEDICO-LEGAL SOCIETY OF THE
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This Journal will publish the leading papers of the Medico-Legal Society, and a resume of its transactions. Its columns will at the same time be open to contributions from all sources and from all parts of the world, on appropriate subjects and questions. It will endeavor to chronicle interesting facts and scientific deductions within its domain, and keep a record of current events, especially in the trial of cases in the courts which involve Medico-Legal questions.

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SUICIDE AND LEGISLATION.*

BY CLARK BELL, Esq.,

President of the Medico-Legal Society of New York.

It is a question of moment, well worthy our serious consideration, to consider what steps can be taken to prevent death by suicide, or to decrease its volume; whether we view the movement as one to prevent the commission of crime, regarding it, as our laws always have done, as a criminal offense to take one's life† or to punish the offender for its commission.

Notwithstanding the philosophy and teachings of the Stoics and ancient philosophers, there are few countries or peoples who do not now regard suicide as a crime.

“*Mori licet cui vivere non placet*” was the motto of the Stoics, who claimed that every man had the right to dispose of himself as he pleased. Indeed, it was contended in that philosophy that when the ills of life became too great for endurance, or one became an object of danger, disgust, dread, or to save from dishonor, it was not only right, but duty, to take one's life.

The maxims of Montaigne were doubtless based on similar considerations.

* Read at the Session of October 24, 1882.

† IV. Blackstone's Commentaries, chap. 14, p. 189, I. Hawk, P. C. 68. I. Hal., P. C., 413.

“A voluntary death is the most beautiful.” “Life depends upon the will of others; death upon our own.”*

Among the Hindoos, Chinese, Japanese, and many savage tribes of men, suicide has been justified under certain conditions, and held up as a duty in others.

The death of Cato by his own hand was doubtless from his determination not to owe his life to Cæsar, whose power he would thus recognize, which he had not done before.†

The Cynics, as well as the Epicurean school of philosophers, justified suicide. Diogenes, and many of his illustrious disciples, died by their own hands.

The Epicureans taught that suicide was commendable, and a duty under certain circumstances; but in ancient and modern times, the laws of most countries have branded suicide as a crime, and frequently punished it with great severity.

The Roman law punished the suicide with refusal of honorable burial.‡

Both Plato and Aristotle taught that punishment should follow the suicide, and he was also punished by confiscation of his goods in certain cases.§ While in Greece honors were refused the memory of the suicide, his name was made infamous, and the body refused the usual Grecian rites.|| By the Canon law the suicide was

* “Essay Montaigne,” vol. 2, chap. 3.

† Plutarch. Cæsar’s Tusculan Disputations.

‡ Laws B., ix.

§ Dig de-re-Militari liv. iv., s. 7.

|| Potter, Greek Antiquities, B. IV. C. 1.

regarded as a criminal, forbidden the prayers of the Church, and punished with other severe penalties.*

In France, from the earliest times, and in the middle ages, the influence of the Canon law was felt upon the legislative statute to punish suicide. Prior to the abrogation of these severe laws, in 1791, frightful penalties were visited on the bodies of suicides, and their goods were confiscated.†

In England, the Roman and Canon law both found exponents in the early English statutes. Under King Edgar, the suicide was refused Christian burial and his goods confiscated, unless insane or grievously sick. This statute is cited by Dr. O'Dea from the old Saxon law, in his able work on suicide (page 183).

The old English custom, of burying the body at cross-roads, pierced by a stake, was stopped by an Act of 4, George IV., c. 52, ordering their burial at night, between the hours of 9 and 12 o'clock.

These early English laws are not all abrogated. Many of them are still upon the statute books, but have fallen into general disuse, and may be regarded as obsolete.

In the present age, by general concurrence, it may be safely stated, that in all civilized countries suicide is regarded as a crime, because it is an offense against the laws regulating and ordering the general welfare of society. It has been well said that "obedience to the

* Law 12, Can. 23, quæst 4.

† Huryart de Vouglorns, pp. 183, 185. Serpillon Tome, II. p. 960. Loy-sell liv., VI., Title II., regel 28.

law is the highest duty of the citizen." Law is at the foundation of society, without which there is no permanence or safety to the individual. The guarantee of safety to citizens by society rests upon the law which upholds and supports it. Protection of human life is the corner-stone of all social organizations, and punishment for homicide must, in the nature of things, rest inherent in society under the laws regularly passed for the protection of the citizen. The suicide violates the social system by taking a human life, and strikes at the foundation upon which society rests. We cannot admit the legal right of suicide without at the same time consenting to the destruction of the elementary principles upon which society is based.

For the purposes of this discussion we must then inquire :

1st. Is suicide, as a social evil, on the increase ? and

2d. What can be best done by society to diminish its increase, either by legislation or otherwise ?

As to the first proposition : Is suicide upon the increase ? From 1794 until 1804, the yearly average suicides in Paris was stated by Brierre de Boismont at about a hundred and seven. There seems to be no reliable data prior to 1794, at which time the laws were changed. Dr. O'Dea, in his valuable and careful work on suicide, already quoted, states, however, upon the authority of M. de Foville, that during the period ending in 1837, and commencing in 1791, the proportion of suicides in France relative to the population had increased fifty per cent.,

and that from 1837 to 1847 this proportion had further advanced to the frightful extent of seventy-eight per cent.

The total suicides in France for the forty-five years, from 1831 to 1875, on the authority of M. Lacassagne, in *Precis de Medicine Judiciare*, and of M. E. Maret, in his work *Du Suicide en France*, were stated in the Medico-Legal International Congress, at the session of August, 1878, in Paris, by M. le Docteur Jeannel, at 173,232, the yearly average of which would be about 3,850. The annual number from 1831 to 1835 was 3,317, which had increased from 1871 to 1877 to the number of 6,107.

These statistics show, in France, a rapid and steady increase since 1831 in the annual number of suicides.

M. Jeannel states that these statistics are too low to embrace the entire number, for the reason that many suicides are never known to the public administration, and cites Esquirol as an authority that in his time many suicides were not known to the administration; also Briere de Boismont, who insisted upon the impossibility of obtaining complete or perfect statistics of suicides in France at that period.

M. Lacassagne, who was present at the session of the International Congress at the time, stated, that he regarded the statistics presented by M. Jeannel as very exact.

He conceded that there was constant yearly increase in France in the number of suicides. He also stated that Paris, probably of all the cities of the world, furnished

the largest number in proportion to its population, and that, while this was true of Paris, it was not true of that part of France outside the larger cities. He stated that suicides in France, in the country districts, were exceedingly rare. It is more difficult to give reliable statistics for England. Quetelet gave this subject attention from the commencement of the present century, and came to the conclusion that there was a remarkable uniformity in the annual number of suicides, if considered in groups of ten or twenty years, and that while it varied in exceptional years, the grouping of periods of ten or twenty years was quite uniform. In London the annual suicides about the year 1850 ranged from 213 to 266, while the average for groups of successive years was 240.

Dr. O'Dea in his work quotes Quetelet and states the present annual rate in London at about 260, when estimated in a succession of years.

All statistics and all experience show that exceptional years and causes produce exceptional results.

EPIDEMICAL SUICIDE.

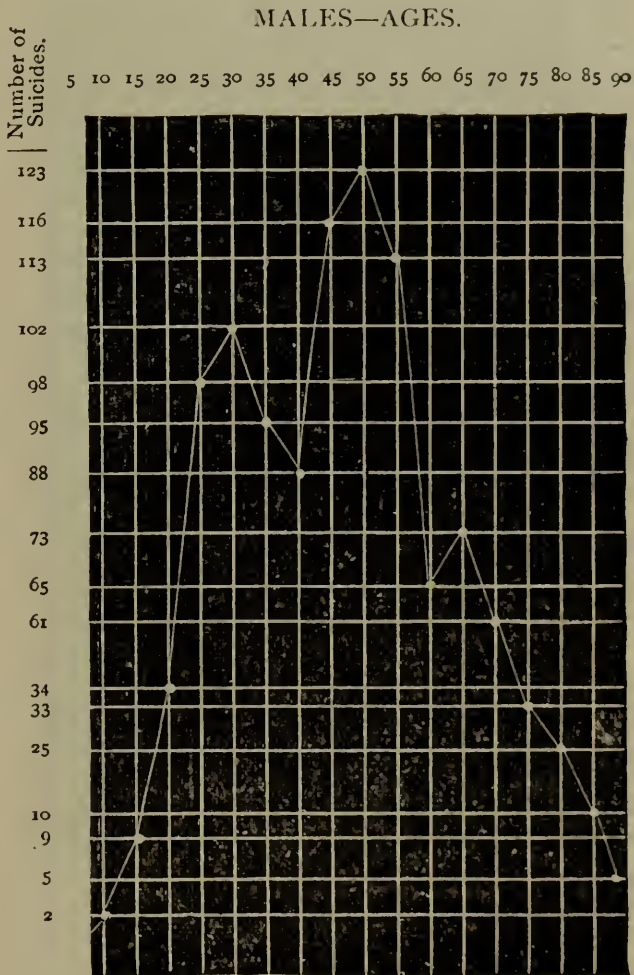
There is frequently an epidemic of suicides in a district. Notably, the Egyptian epidemic, caused by Hegesias' orations; the Milesian; the epidemic of Manfredi, in 1679; Rouen, in 1806; St. Piermont Jean, in 1813; Etampes, Lyons and Versailles, the latter of which, in 1793, numbered some 1,300 victims.

A great number of suicides were committed in June, 1697, at Hansfield.*

* Sydenham Collection, vol. 2.

It is well known that wherever a suicide is committed by precipitation from a monument or height, it is frequently followed by several others, as from Notre Dame, Colonne Vendome or Colonne Bastille.*

Niagara Falls, in our country, is a parallel, though not



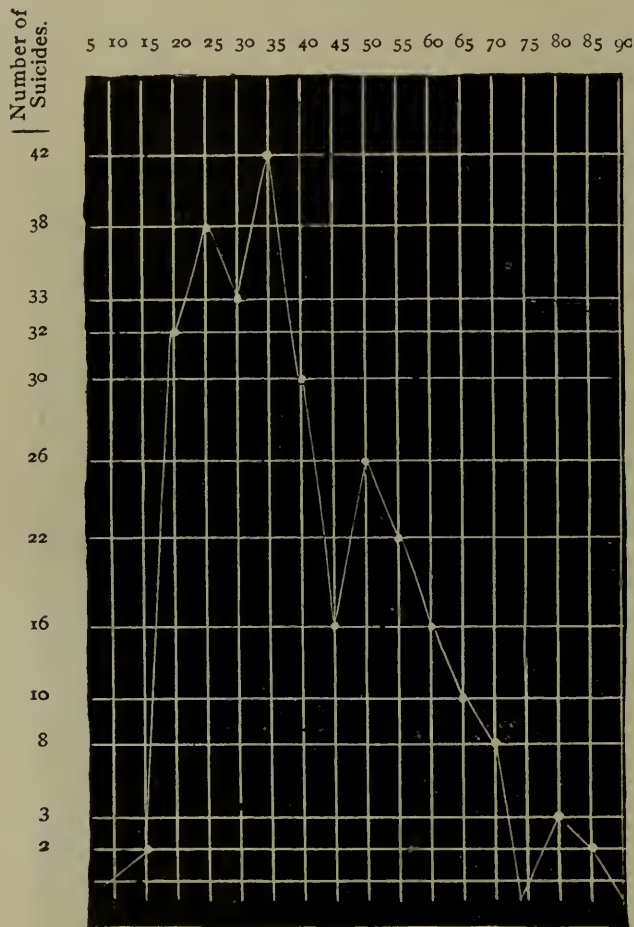
Compiled from the U. S. Census of 1870.

* Brierre de Boismont, *ouv-cit*, p. 141,

completely, as it is more difficult of access to the great masses by reason of its distance from our large cities.

The pensioner who hung himself on one of the lanterns

FEMALES—AGES.



Compiled from the U. S. Census of 1870.

of the Hotel des Invalides in Paris, was followed within a few weeks by twelve others, hung at the same place, which was only stopped by removing the lantern.

In Cuba, the negroes committed suicide in large numbers, under a religious delusion, believing that they

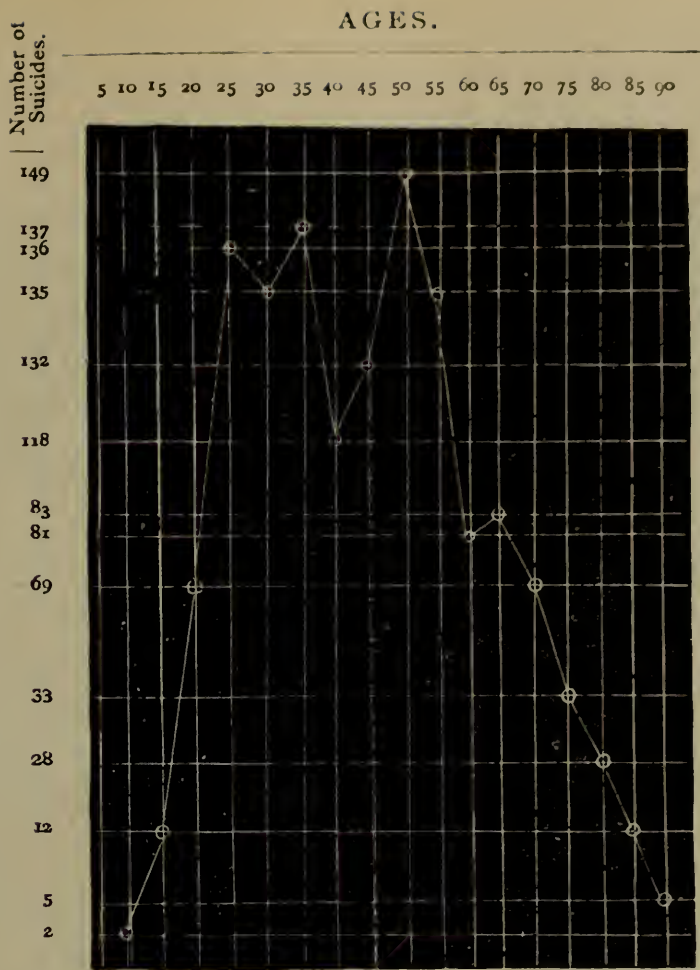
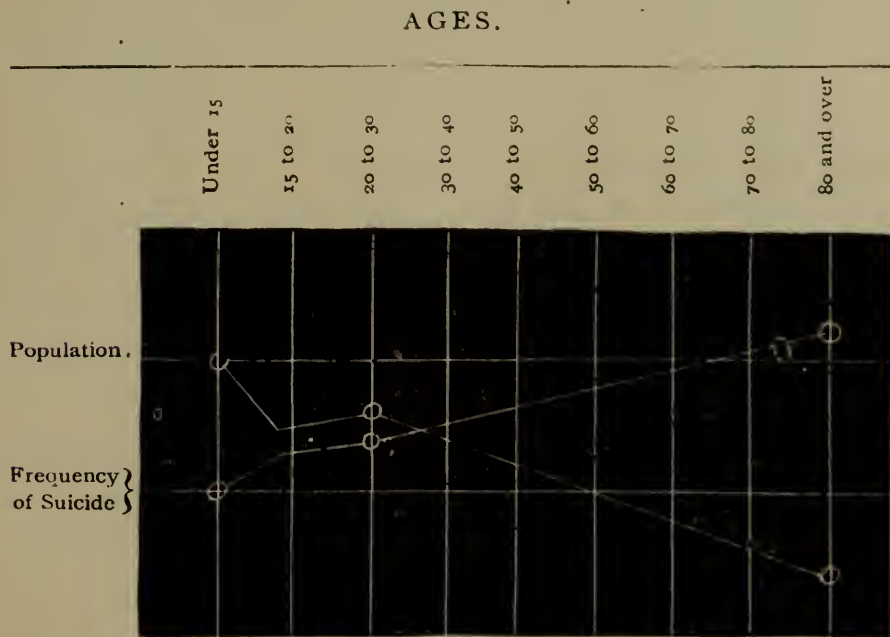


CHART I.—Suicides and Age. Both Sexes. Compiled from the U. S. Census of 1870.



would be restored to life at the end of three days. It was only suppressed by the Governor-General ordering the heads exposed in public for one month, their bodies burned and their ashes publicly scattered to the winds.*

The foregoing tables show that the largest number of suicides occur between the ages of twenty-five and fifty-five.†

O'Dea submits an interesting diagram or chart, comparing suicides at various ages with corresponding totals of living persons.‡

The following table, quoted by the same author, from the *Medico-Chirurgical Review*, vol. 27, p. 211, shows the proportion of suicides to the entire number of persons at the different periods of life :

YEARS.	SUICIDES.	POPULATION.
10 to 15.....	12	50,000
16 " 20.....	38	71,000
21 " 25	63	73,000
26 " 30	67	70,000
31 " 40.....	107	117,000
41 " 50	115	91,000
51 " 60.....	85	74,000
61 " 70.....	41	51,000
71 " 80.....	14	20,000
81 " 90.....	2	4,000

From 1858 to 1864 the number of deaths were :

AGES.	MALES.	FEMALES.
All ages.....	6,754	2,462
5 years.....	5	1
10 years	32	19
15 years.....	545	435
25 years.....	886	373
35 years.....	1,294	428
45 years.....	1,540	532
55 years.....	1,474	374
65 years	759	222
75 years.....	198	66
85 years.....	21	22

* Revue de Paris, 19 April, 1845.

† P. 140, O'Dea on Suicides.

‡ O'Dea on Suicides, p. 141.

1858 to 1864. AGES.	Average annual death rate of males to 1,000,000 living at each age.	Average annual death rate of females to 1,000,000 living at each age.
	MALES.	FEMALES.
All ages.....	98.4.....	34.1
5 years.....	0.....	.1
10 years.....	4.3.....	2.6
15 years.....	46.6.....	32.8
25 years.....	90.7.....	33.5
35 years.....	166.7.....	49.1
45 years.....	249.1.....	85.0
55 years.....	362.3.....	92.0
65 years.....	374.5.....	81.8
75 years.....	261.1.....	70.0
85 years.....	238.4.....	87.2

From these tables Dr. O'Dea finds the following conclusions :

1. Suicides increase in number until extreme old age (limited in England after seventy-five years .

2. The increase is in direct ratio to population until the age of thirty, after which it continues in inverse ratio to population until the allotted time of life.

3. The number of suicides is very small, both absolutely and relatively, to population previous to the age of fifteen.

SEX.

The influence of sex on suicide Dr. O'Dea shows by similar charts based upon the census of 1870, which place the maximum between the twentieth and fortieth year. Women commit suicide earlier in life ; men, later. The proportion of the sexes is in general three men to one woman, except in England and Wales the ratio is two to one, and in Denmark four to one. In large cities the proportion is nearer equal. This author quotes two tables computed from "*Lisle, du Suicide*," pp. 105, 106,

which are interesting by way of comparison as to causes of suicide in females, bearing upon the question of proportion between the sexes.*

CAUSES OF SUICIDE.	MEN.	WOMEN.	TOTAL.
Grief caused by loss of parents, etc.....	373	193	566
Grief caused by ingratitude of children....	173	74	247
Grief caused by departure of children.....	20	20	40
Grief caused by separation of family.....	35	16	51
Forbidden love.....	938	627	1,565
Jealousy between married couples and between lovers.....	53	118	171
Grief at quitting master or a house.....	229	24	293

The difference between the sexes in indulgence of propensity or passion by the following table :

CAUSES.	MEN.	WOMEN.	TOTAL.
Gambling	157	1	158
Laziness	76	4	80
Debauchery	1,569	223	1,792
Drunkenness.....	2,761	441	3,202

Upon the question of suicides for the cause of
INSANITY,
the following table, computed from the census of 1870,
is made up by Dr. O'Dea :

STATES SHOWING THE LARGEST INSANITY RATES.	Ratio to 100,000 population, U. S. Census, 1870.	
	INSANE.	SUICIDES.
California.....	14,493	196.9
Maine.....	4,625	126.4
Massachusetts.....	7,201	182.6
New Hampshire.....	7,854	172.1
Vermont.....	7,000	218.1

* O'Dea on Suicide, pp. 153, et seq.

Being States showing the largest insanity rates, in which Vermont leads.

The States showing the lesser rates are :

STATES.	Ratio to 100,000 population, U. S. Census, 1870.	
	SUICIDES.	INSANE.
Delaware	2.399	52.0
Georgia	1.182	53.5
Indiana	3.154	89.4
Louisiana	2.063	62.0
Tennessee	1.517	73.5

A general table from the census of 1870 is given under the head of Table of Suicide and Social Condition in the United States. A close examination of these tables shows no uniform rate or proportion between suicide and insanity. The difference is inexplicable by any known law.

Connecticut, with a suicide rate of 3.907, has an insanity rate of 143.05, while Rhode Island, with a suicide rate of 2.760, has an insanity rate of 143.0.

Dr. O'Dea thinks that the causes which tend to increase insanity also tend to increase suicide.

About 30 per cent. of insane are believed to be melancholic.*

Dr. John P. Gray thinks that about 35 per cent. of melancholic insane develop suicidal tendencies.†

The relation in Europe of the proportion of insane to the whole number of suicides is about one-third.‡

*Penn. Hospital Reports for Insane, 1860 to 1870.

†Suicide, *Journal of Insanity*, July, 1878.

‡Von Ettingen's Moral Statistics and Christian Manners.

I am unable to find any American statistics on this subject.

EDUCATION.

MM. Bronc and DeLisle, French writers, who have given this subject careful study, unite in the opinion that the diffusion of education and general intelligence increase the rate of suicides in France. That department of France which is first in intelligence (Department du Nord) has the largest proportion of suicides. In this department 50 per cent. of all the suicides of France

SUICIDES NUMEROUS.			SUICIDES FEW.		
Departments.	Suicides.	Illustrated 100,000 pop.	Departments.	Suicides.	Illustrated 100,000 pop.
Seine	806	70	Corse	6	31.4
Nord	155	29.5	Lozère	7	32.4
Seine-et-Oise.....	155	7.9	Hautes-Pyrénées.....	9	11.8
Seine-et-Inférieure....	151	29.1	Cantal	9	25.2
Aisne.....	129	19.1	Hautes-Loire	9	43.5
Ois	127	14.4	Ariège	10	66.6
Marne	125		Pyrénées-Orientales...	10	41.6
Seine-et-Marne.....	114	10.9	Haute-Savoie.....	11	15.8

occur. The Department of the East is next with 16 per cent., while of the remaining departments the three, Center, South and West, where education is lowest, the rate is only 34 per cent. between them. The influence of Paris as a city, however, where the rate is so high, weakens the force of M. Bronc's opinion to some extent. The following table from M. Bronc's book will be of interest.*

*" L'Europe, Politique and Social." Paris, 1869, p. 206, et seq.

NATION AND RACE.

The tables of M. Bronc's, bearing on other questions, are equally interesting and valuable. Deaths from suicide in 1876, in each of the named countries :

COUNTRIES.	Proportion of suicides to 1,000,000 pop.	Degree of Education. Percentage of Illiteracy.
Switzerland.....	196	Nearly free from illiteracy.
England and Wales	73	33.
Scotland	37	21.
Ireland	21	46.
Norway.....	70	Nearly free from illiteracy.
Finland.....	34	" " "
Sweden.....	92	" " "
Prussia.....	134	" " "
Bavaria.....	103	7.
Belgium.....	82	30.
Austria.....	113	49.
Italy.....	37	73.
United States.....	40	20.

These tables of M. Bronc do not accord with our experience in the United States respecting ignorance and crime, nor are they in accord with the better opinion in this country as to the relation of illiteracy to crime so far as we can estimate.*

It may be of interest to inquire concerning the causes of suicides, and I submit a few statistical facts concerning them.

DOMESTIC TROUBLES.

It will be observed that France and Italy have a higher rate of suicide from domestic troubles than other countries. I quote a table : †

*Prisons and Reformatories, Home and Abroad. London, 1882. Kidder & Schem, Op. Cit. Arb. Criminal Education. O'Dea on Suicide, 167.

†Compiled by O'Dea from the Belgian Statistics published in 1. Europe of Brussels. O'Dea, Suicide, 177.

COUNTRIES.	Proportion of suicides to sex to 1,000 cases, from domestic troubles.	
	MALES	FEMALES.
Sweden.....	138	164
France.....	75	76
Italy.....	48	51
Prussia.....	26	29
Saxony.....	21	18
Norway.....	16	24

DRUNKENNESS.

Different countries show a wide difference in rate as to this cause of suicide. In Denmark it is stated to be nearly forty per cent. Nearly the same proportion is claimed for Norway and Sweden. In Italy, on the contrary, only six out of every 1,000 can be attributed to this cause. It is estimated that at least seven per cent. of suicides are due to drunkenness, which I think rather too low.*

This author furnishes an interesting table, compiled from the census of 1870, contrasting suicides and deaths by alcohol in this country.

SUICIDES—DEATHS BY ALCOHOL IN THE UNITED STATES.

	Suicides.	Deaths from Alcohol.
Chinese and Japanese.....	10	
Other South of Europe.....	13	5
Italians.....	1	3
Other North of Europe	7	3
French.....	19	12
Scotch.....	10	22
English and Welsh.....	42	57
Irish.....	104	488
Swedes, Norwegians and Danes.....	22	5
Germans.....	146	144
All others.....	16	12
Total.....	390	751
Indian.....	1	1
Colored.....	18	61
White.....	813	535
Total.....	832	597
Unknown.....	21	62
Aggregate.....	1,243	1,410

*O'Dea, Suicide, p. 184.

NATIONALITY.

The difference in rate in different countries is remarkable, and while various writers account for it in various ways, there is really no satisfactory explanation. Moreover, different cities in the same country will have a widely different rate. In England the rate is highest in the southeastern counties and lowest on the western coast.* France shows the same phenomena as before stated.

In our own country the proportion of suicides in San Francisco, and in the cities of Nevada, is very largely in excess of New York, Brooklyn or Philadelphia. The following table from the work of Dr. O'Dea gives the general ratio as to race and nationality : †

NATIONS.	No. of suicides in 1,000,000 pop.	NATIONS.	No. of suicides in 1,000,000 pop.
Portugal.....	7	Belgium.....	55
Spain.....	14	Austria Cisleithavia	84
Ireland.....	16	Bavaria.....	73
Russia.....	25	Baden.....	109
Italy.....	26	France.....	110
Finland.....	30	Prussia.....	123
Scotland.....	35	Wurtemberg.....	164
United States.....	40	Switzerland.....	206
Eng. and Wales ..	68	Denmark.....	288
Norway.....	94	Saxony.....	251
Sweden.....	66		

The study of the causes that make the rate so greatly in excess in Switzerland, France and the German-speaking countries, is very interesting, but I have not space for it in this paper. The largest number of suicides in

*Report of English Register-General for 1873.

†Table of Dr. O'Dea, Suicide, p. 199.

London in any one year was in 1846, during the great railroad panic, and the per cent. rose from 7.2 per cent. to 12.8 in the 100,000 population in France in 1847.

The vital statistics of Ireland show an increase of suicides from 7.57 to 8.41 in the decade that witnessed the great famine in that country.*

The statistics of Quetelet, to which allusion has been made, are analyzed and formulated by O'Dea, pp. 113, 140 and 141.

GENERAL CAUSES.

Brierre de Boismont gives the following table, made from a study of 4,595 cases of suicide (pp. 261 etc.).

Tables of Brierre de Boismont, from authentic documents of the causes of suicide, selected and analyzed from 4,595 cases :

CAUSES OF SUICIDE IN ITALY.	NUMBER OF SUICIDES.						Per 1,000 Suicides	
	1876.			1877.			1877.	
	Total	Males	F'm'les	Total	Males	F'm'les	Males	Females.
Unhappiness.....	64	58	6	105	92	13	100.55	58.04
Loss of employment..	7	7		2	2		2.19	
Reverses of fortune....	141	136	5	104	102	2	111.47	8.93
Domestic trouble.....	93	73	20	88	68	20	74.32	89.29
Hindered love.....	47	33	14	36	19	17	20.76	75.89
Disgust of m'lty s'rvce	7	7		8	8		8.74	
Disgust of life	26	23	3	28	27	1	29.51	4.46
Fear of condemnation.	21	21		24	24		26.23	
Jealousy	5	4	1	6	5	1	5.46	4.46
False point of honor...	7	7		11	11		12.02	
Ante-nuptial pregnancy.	6		6	4		4		17.86
Drunkenness	7	6	1	6	6		6.56	
Physical suffering....	59	51	8	79	64	15	69.95	66.96
Cerebral fever.....	5	4	1	7	4	3	4.37	13.39
Insanity, delirium....	127	89	38	136	95	41	103.83	183.04
Monomania	18	12	6	24	15	9	16.39	40.18
Pellagra.....	55	38	17	121	77	44	84.15	196.43
Idiocy, imbecility....	8	7	1	12	9	3	9.84	13.39
Unknown.....	321	278	43	338	287	51	313.66	227.68
Total	1,024	854	170	1,139	915	244	100,000	100,000

*O'Dea, Suicide, p. 277.

FIRST GROUP.		
Drunkenness.....	530	
Poverty, Misery....	282	
Reverses from financial embarrassment.	277	
Licentiousness....	121	
Laziness.....	56	
Want of Work	43	1,309
SECOND GROUP.		
Insanity.....	652	
Ennui—disgust of life.....	237	
Feebleness—sorrow, melancholy....	145	
Acute delirium.....	55	1,089
THIRD GROUP.		
Domestic troubles....	361	
Other troubles.....	311	672
FOURTH GROUP.		
Sickness.....	405	405
FIFTH GROUP.		
Love.....	306	
Jealousy.....	54	360
SIXTH GROUP.		
Remorse, dishonor, criminal prosecution.....	134	134
SEVENTH GROUP.		
Gambling.....	44	44
EIGHTH GROUP.		
Pride and vanity.....	44	44
NINTH GROUP.		
Unknown motives.....	556	556
Total.....		4,613

And as a further analysis of causes, I give another table from this same author.*

TABLE OF ANALYSIS OF 676 CASES OF SUICIDE.

Bade adieu to parents, friends and the world.....	278
Gave directions as to funeral and burial.....	105
Asked pardon for their suicide	45
Evinced solicitude for parents or children.....	43
Had confidence in Divine forgiveness.....	36
Expressed regret at leaving world, friends, etc.....	38
Avowed belief in a future state.....	22
Died in houses of ill-fame.....	18
Expiated faults or asked forgiveness.....	30
Desired the prayers of the Church.....	11
Prayed friends to shed tears to their memory.....	11
Ascribed their death to useless motives.....	11
Expressed horror at their own death.....	9
Wished their death concealed for sake of family.....	19

*Brierre de Boismont, *Suicides*, p. 262.

2. As to the second proposition or inquiry, viz.: "What can best be done by society to diminish the increase of suicide, by legislation or otherwise?" Whether suicide is on the increase or not, is of sufficient consequence to justify us in studying whether and how far the evil may be avoided, and what legal or punitive measures for its repression or punishment can be adopted. How far can such measures act as a restraint upon mankind to prevent suicide? What restraining influences can be used or adopted, the tendencies of which will be to diminish the volume of suicide? But little doubt can be entertained that the extreme laws of the Romans, Greeks, and the earlier laws of France and Great Britain, barbarous as they may now seem, must have operated largely to deter many from the commission of this crime.

It is, of course, quite impossible to know how many have been thus deterred. Those who were thus prevented in the nature of things can neither be counted, nor with certainty be calculated. One means of forming an opinion is by comparing recent suicides, in proportion to the population, with other times; and the better opinion is that those laws must have exercised a decided and beneficial restraint.

Buckle and Comte both concur in the unwisdom of legal enactments against suicide.*

The verdict of history must, however, be on the other side, and tend decidedly to show the beneficial effects of punitive laws, when strictly enforced.†

*Civilization, vol. 1, pp. 19, 20; *Traite de Legislation*, vol. 1, p. 486.

†O'Dea on Suicide, p. 278, who cites also Tarquin's proclamation to the Roman army. The edict of the Milesian authorities. The famous order of Napoleon I. to his army, which stopped what might otherwise have been a serious epidemic among the French soldiers.

It is most reasonable to suppose that the certainty of loss of goods, disgrace to family, and indignities to the remains, would have deterred many weak or vain persons, who have committed suicide in the past, with no possibility of such results attaching if punitive laws had existed and been enforced. Besides the cases cited where orders, regulations and laws have clearly operated to arrest suicides in epidemical periods, I have felt it important to cite the effect of legislation in British India to suppress that system of suicide formerly so prevalent there, and known as

SUTTEE.

Following is a copy of the official returns of suttee in India, from 1815 to and including 1828 :

DIVISIONS.	1815.	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828
Calcutta.....	253	289	442	544	421	370	372	328	340	373	398	324	337	308
Dacca	31	24	52	58	55	51	52	45	40	40	101	65	49	47
Murshedabada.	11	22	42	30	25	21	12	22	13	14	21	8	9	10
Ratna.....	20	29	49	57	40	62	69	70	49	42	47	65	55	55
Benares	48	65	103	137	92	103	114	102	121	93	55	48	49	33
Barielly	15	13	19	13	17	20	15	16	12	10	17	8	18	10
	378	442	707	839	650	627	634	583	575	572	639	518	517	463

This practice was suppressed in Southern India by Lord William Bentwink declaring it a crime punishable by the Criminal Court.*

All India was freed by similar laws and regulations adopted by the British generals, which have effectually suppressed the practice.

What would be the effects, if the unsuccessful attempt

* Wheeler's History of India, vol. 3, p. 273. O'Dea Suicide, 306.

at suicide was punished by law as a crime in all cases, and a conspicuous example made of the offender? Would it not operate as a wholesome restraint, in some cases at least, against the commission of the act?

LEGISLATION PROPOSED IN FRANCE.

The most striking proposition of recent times is that submitted by M. le Dr. Jeannel, to the International Medico-Legal Congress, at the Paris session of August, 1878, to provide by law, that the corpses of all suicides be furnished to the medical schools for dissection, except in such cases as the victims were insane or irresponsible. By the Penal Code of France, Art. 64, it is provided, that suicide is not a crime when committed by a person who is insane at the time, "*en etat de démence au temps de l'action.*" Dr. Jeannel supported his proposition by a strong array of facts, and claimed :

1. That such a law would increase the resources of the medical schools, for careful and valuable anatomical studies, etc.

2. Seriously diminish the number of suicides. He proposed the following points for the consideration of the Congress :

1. Each particular case of suicide should be given to a Medico-Legal determination or Commission (*une consultation Medico-Legale*) to determine as well the fact of the suicide as the sanity of the victim.

2. The passage of a general law requiring that the body of every suicide who was found to be sane and

responsible for his acts should be sent to the medical college (*Amphitheatres Anatomique*).

It was objected by M. Lacassagne that it would be very difficult to execute such a law as Dr. Jeannel proposed. He alluded to the difficulty of transporting dead bodies to the anatomical schools, especially from a distance, and also to those persons who from religious scruples oppose the dissection of bodies at all in the hospitals or anatomical schools. He also thought that a very strong feeling of opposition would arise on the part of the families and friends of suicides to such a disposition of the remains.

M. Gubler took part in the discussion and opposed the proposition, claiming that such a law would aggravate the situation of families so unfortunate as to have a suicide occur in their midst, and that it would be another evil for them to bear, added to the shame and disgrace of the act itself. He feared also that instead of increasing the anatomical subjects, it would create a feeling against the schools, which would in the end operate to diminish the number of subjects to be obtained.

M. Devergie, who presided at the session of the International Congress, expressed a doubt whether the Legislature would consent to deprive a family of its rights to dispose of the remains of one of its members who had committed suicide.

No action was taken by the Congress upon M. Jeannel's proposition.

The objections thus presented were considered by Dr.

Jeannel, in a reply submitted as annex No. 2, which forms a part of the published proceedings of that Congress, and in which the questions involved are treated with signal ability.

To the objection as to the transportation of the dead bodies, he submits that the experience of the commission of the French Society of Medical Jurisprudence had demonstrated the entire feasibility of transporting dead bodies, and perfectly retarding putrefaction by the use of phenic acid, and gives the formula which perfectly embalms the body at a cost of five or six francs, which was then in actual use throughout France between the various prisons and medical schools.*

Dr. Jeannel meets the objections raised with powerful arguments. He demonstrates the right of the Legislature to pass such a law, and argues that it would not only have a beneficial result as a restraint upon suicide, but sensibly aid the schools in their labors.

While it must be conceded that families would at first object to such a disposition of the bodies of suicides, it is upon a solid and safe principle that such a law would be founded if the Legislature should pass it. The bodies of murderers or criminals, if furnished for dissection to the medical schools, present quite the same question, whether the criminal is a suicide or a murderer of some one beside himself.

The consequence upon the family is one of the real

* *Poudre Antiseptique de Wafflard. Acide Phenique brut., 1. Seizure de bois, 4.*

arguments for the passage of such a law, because the suicide, if sane, must consider all the consequences of his act, and this must operate in many cases as an enormously powerful restraint against the commission of the crime.

No valid legal objection could be raised by the family in the case of a suicide, that could not be raised if a member convicted or accused of any other crime should die pending trial, or after conviction while in prison.

No question of this character had force against the ancient punitive laws.

What is needed is additional force upon the moral sense of the community, to render the crime of suicide more generally odious and detestable.

There is at present practically no legal restraint against suicide.

The suicide has nothing to fear for his crime, even if unsuccessful. Our laws are not enforced.

Is society doing its whole duty in the matter? Should not such legislation be considered as would be calculated to arrest the hand of weak persons, who now really encounter no resistance to their suicidal ideas and tendencies, by legislation or public sentiment?

Of course, laws of all countries recognize insanity as a defence to crime. Suicide is within that rule. No insane or irresponsible person can be held responsible for suicide.

Dr. O'Dea admirably suggests the great value and importance of religious and moral training, as an important

factor in preventing suicide. He most ably supports this, as well as the value of medical advice and treatment, as a means of prevention, in the closing chapters of his work.

These should not be neglected. They should be studied and made use of to the fullest extent. But can we rely alone upon these means as a preventative ?

The question is one of great importance and worthy serious study. Dr. O'Dea has dedicated his work : " To the Medico-Legal Society of New York, whose successful efforts at medical, legal and social reform reflect honor on itself and lasting benefit on the community."

This work has been of great value in the preparation of this article, and while the author only touches lightly on the legal means of prevention, the weight of the book favors sound action, if public opinion would be behind proper remedial legislation, without which no important reform can be accomplished by legal means. If this Society can be useful in awakening public interest in such remedial legislation as would save the lives of even a few unfortunates who would otherwise perish by their own hand, it would, I feel quite sure, be doing good work in thus acting. If it can be instrumental in bringing into force and play any elements within the commonwealth that shall so intensify and make odious this growing crime of suicide, it ought not to hesitate long in its action.

The consideration of the feelings and wishes of the family and friends of the suicide, we must all feel

sensibly ; but higher and broader and nobler than these is the great good to the State, the public conscience and the heart.

I am not aware what action has been taken by the French Society upon this question, or whether any action has been taken, but I have thought it not inconsistent with my duty to bring the subject to the thoughtful attention of the Medico-Legal Society of New York.

APPENDIX.

Suicides in the United States and Territories at the Tenth Census :

STATES AND TERRITORIES.	SUICIDES.	STATES AND TERRITORIES.	SUICIDES.
Alabama	10	Missouri	99
Arizona.....	8	Montana.....	13
Arkansas.....	14	Nebraska.....	13
California.....	188	Nevada	13
Colorado.....	12	New Hampshire.....	31
Connecticut.....	42	New Jersey.....	67
Dakota.....	7	New Mexico.....	3
Delaware.....	1	New York.....	332
District of Columbia	13	North Carolina.....	20
Florida.....	1	Ohio.....	191
Georgia.....	28	Oregon.....	26
Idaho.....	3	Pennsylvania.....	219
Illinois	171	Rhode Island.....	10
Indiana.....	115	South Carolina.....	16
Iowa.....	178	Tennessee.....	39
Kansas	43	Texas	65
Kentucky.....	64	Utah	4
Louisiana.....	34	Vermont.....	22
Maine.....	49	Virginia.....	23
Maryland.....	33	Washington Territory.....	9
Massachusetts	124	West Virginia.....	14
Michigan.....	101	Wisconsin	76
Minnesota.....	49	Wyoming	1
Mississippi.....	15		
Total--United States.....			2,517

Since reading this paper, I have seen some statistics

prepared by Dr. John T. Nagle, of suicides in the city of New York for the eleven years ending December 31, 1880, also the proportion of suicides to the population of New York City from the year 1804 to 1880, inclusive, from which I make some interesting extracts.

Dr. Nagle claims that :

1. There is a marked difference in the number of suicides, based on nationality, the Germans especially exceeding the Irish in number.

2. That as to sex, the males exceed the females in number, during past eleven years, by males, 1193; females, 328. The proportion being 3.64 males to one female.

3. The highest rates of suicides in New York City during the past seventy-seven years was in 1805, when there was one to every 3,017 inhabitants; and the lowest in 1864, when the rate was 1 suicide to 23,827. In 1874 the rate was one to 5,515, and was the largest year since 1834, when the proportion was 1 to 3,474.

The maximum among males was between the ages of 35 and 40 years, and of females between 30 and 35 years.

4. The age and sex of suicides in New York for the eleven years ending December 31, 1880, was :

Males.....	1,193
Females.....	328
<hr/>	
Total for eleven years.....	1,521
Average for each year.....	138. $\frac{27}{10}$

Dr. Nagle has classified these deaths, to see whether time of year influences suicide, into four quarters of

the year and for the eleven years, with the following result :

First quarter.....	341
Second quarter.....	417
Third quarter.....	412
Fourth quarter.....	351

He states that these relations vary in different years. He states that the average annual rate of suicide for the eleven years was 16.74 to every 100,000 of the native population.

During the same period the rate was for foreign born population 26.24 to every 100,000. It was less frequent among the colored than the white population.

The table of nationalities is interesting, the Belgian heading the list and the Irish of foreigners being the lowest, viz.:

Austria.....	20.54	Portugal.....	96.77
British America.....	27.28	Russia.....	12.86
Bohemia.....	29.65	Scotland.....	23.84
China.....	57.32	South America.....	92.15
Denmark.....	56.39	Sweden.....	39.04
England.....	27.68	Switzerland.....	77.09
France.....	45.27	Spain.....	56.92
Germany.....	34.49	Wales.....	13.49
Holland.....	47.13	Cuba.....	43.53
Italy.....	13.98	Belgium.....	115.06
Norway.....	51.23	Ireland.....	9.71
Poland.....	18.76	United States.....	5.61

The data as to Belgium is more curious than reliable, as the total Belgian population for the eleven years was only 478, and the number of suicides six.

In the table of causes, 503, or really one-third of the whole number, was by poison, of which Paris green was the favorite, causing 200 deaths, and various forms of opium, 139 deaths. Pistol, gun-shot wounds caused 399

deaths, hanging 239, cutting throats or arteries with razors and knives, 175, leaping from heights 82, and drowning 101.

There are interesting tables in Dr. Nagle's paper, in regard to foreign cities and American cities, for which I regret that I have no space. Dr. Nagle's tables are especially valuable, for the reason that he has the benefit of the State Census of 1875 ; while all the tables I have hitherto seen were based upon the U. S. Census of 1870. I am indebted to the Commissioner of Patents for the first table in appendix, based on the census of 1880, which his courtesy has enabled me to furnish since my paper was read.

SUICIDE AND SOCIAL CONDITION IN THE UNITED STATES, CENSUS 1874.

SUICIDE AND LEGISLATION.

31

STATE.	No. of Suicides	Pop- ulation.	Per cent. of Suic- ides to 100,000 Pop.	Percent- age of Illi- tacy in 100,000 Pop.	Population Sq. Mile.	Prevailing Industry.	Prevailing Religious Belief.	Church Accom- modation.	Per cent. of Insan- ity 100,000 Pop.
Alabama	8	996,992	.802	73.499	19.66	Agriculture	Method. and Bapt.	Good	55.7
Arkansas	4	484,471	.825	50.493	9.30	"	"	"	33.3
California	84	582,031	14.432	9.723	2.29	Mining & Agri.	" and Catholic	Very deficient	196.9
Connecticut	21	537,451	3.907	9.172	113.15	Manufacturing	Congregational	Good	143.5
Delaware	3	125,015	2.399	33.961	58.97	Agriculture	Methodist	Very deficient	32.0
Florida	7	188,248	3.718	73.329	3.17	"	"	Good	15.3
Georgia	14	1,184,109	1.182	74.921	20.42	"	Method. and Bapt.	Deficient	53.5
Illinois	106	2,539,891	4.173	8.659	45.81	"	Methodist	Good	61.0
Indiana	43	1,680,637	3.154	12.124	49.71	"	"	Deficient	89.1
Iowa	36	1,194,320	3.106	5.843	21.69	"	"	Good	62.1
Kansas	15	373,299	4.002	10.361	4.48	"	Meth. and Presbyter.	Very deficient	35.0
Kentucky	23	1,321,011	1.741	14.038	35.33	"	Method. and Bapt.	Good	91.2
Louisiana	15	726,915	2.063	73.376	17.91	"	ath. Method. Bapt.	Very deficient	62.0
Maine	29	626,915	4.625	5.190	17.91	Man'f'g & Agri.	Congr. "	Good	126.4
Maryland	13	780,894	1.665	31.963	70.20	"	Methodist	"	91.0
Massachusetts	105	1,457,351	7.200	11.849	186.84	"	Congregational	"	182.6
Michigan	33	1,187,231	2.780	7.390	20.79	Agriculture	Methodist	Very deficient	63.0
Minnesota	7	146,056	1.569	8.329	5.26	"	Catholic	"	69.7
Mississippi	12	827,922	1.448	73.078	17.56	"	Method. and Bapt.	Good	29.5
Missouri	54	1,721,265	3.137	21.442	26.34	"	Cath. Meth. Bapt.	Very deficient	73.1
Nebraska	8	129,322	6.186	5.618	1.62	"	"	"	21.6
Nevada	5	48,711	8.516	3.283	0.4	Mining	Cath. Method. Bapt.	"	3.4
New Hampshire	25	318,300	7.851	5.512	34.30	Man'f'g & Agri.	Method. and Bapt.	Good	172.1
New Jersey	21	906,096	2.306	10.114	168.91	Manufacturing	Method. and Presby.	"	101.4
New York	234	4,387,464	5.333	9.203	43.25	" & Commerce	Methodist	Deficient	145.0
North Carolina	10	1,071,371	.923	68.836	21.13	Agriculture	Method. and Bapt.	Good	72.7
Ohio	96	2,665,260	3.600	9.976	66.69	"	Methodist	"	128.0
Oregon	4	101,883	3.925	6.906	0.95	"	Methodist	Deficient	120.0
Pennsylvania	125	3,522,050	3.549	10.053	76.56	Manufacturing	Various dissenting	Good	111.0
Rhode Island	6	217,353	2.760	17.178	166.43	Agriculture	Baptist	"	143.0
South Carolina	5	705,606	.708	78.834	30.75	"	Method. and Bapt.	"	47.1
Tennessee	19	1,258,520	1.517	52.065	27.60	"	Method. Bapt. Pres.	"	73.5
Texas	28	818,899	3.418	50.204	2.98	"	Method. Bapt.	Very deficient	33.0
Vermont	25	330,551	7.563	9.951	32.37	"	Cong. Method. Bapt.	Good	218.1
Virginia	16	1,225,163	1.360	68.301	31.95	"	Method. Bapt.	"	91.8
West Virginia	11	442,014	2.500	29.477	19.22	"	"	"	84.6
Wisconsin	26	1,094,985	2.4	8.495	19.56	"	Catholic, Methodist	Very deficient	79.4

THE MENOPAUSE: ITS RELATION TO INSANITY.

BY T. R. BUCKHAM, A.M., M.D.

I have just read with lively interest the "paper" by Mr. Chamberlain, the discussion had thereon, and the editorial comments as they appeared in the MEDICO-LEGAL JOURNAL of last month.

Without specially referring to the "Druse Case" (of which there is not sufficient evidence in the JOURNAL to enable any reader to form an intelligent opinion), an examination of the general medico-legal question of the relation of the menopause to insanity, may not be wholly without interest or profit.

To properly study this question, the natural method would appear to be, to first interrogate nature, as to the uses of the function of menstruation, and thereby try to discover the intention of the Creator in making that most marvellous and beneficent provision for women.

From the general natural organization of woman, it is obviously intended, that from a certain age to a certain age she shall bear and nurse children, as before the ova are developed, and after they are all gone, there is no menstruation.

During pregnancy the woman is subjected to the

* Read before the Medico-Legal Society, April Meeting, 1888.

annoyance and inconvenience of displaced pelvic viscera ; subjected to the additional load of increased weight and bulk, causing more or less nervous irritation ; besides there is a draft upon her vital force for the support and growth of another being, and, added to these, the exhaustion consequent upon parturition and lactation. Under such an accumulation of burdens, were it not for the wonderful compensation of the menstree, a large percentage of our delicate ladies would inevitably succumb under the grievous superimposed load consequent upon pregnancy, and even the strongest of the sex would in time have their constitution sadly debilitated, if not utterly shattered.

The design of nature is, to utilize all her vital forces in the growing girl, that her body may develop into vigorous womanhood ; but when that condition has been attained, when it is possible, nay, probable, that new and exhausting demands may soon be made upon her strength, nature has generously arranged for the generation of more vital force than is necessary for her ordinary maintenance, which excess will be periodically thrown away, until the extraordinary demand caused by pregnancy shall arise, then the catamenial excess will cease to be thrown away, will be retained in the expectant mother's person, and, so admirable and complete is the compensation afforded, that pregnant women during their full term are often stronger and more healthful then, than they are at other times, and they are in like manner compensated during lactation. The same

compensation is often observed when a woman is the subject of any wasting disease, *e.g.*, it is well known that the cessation of the menses is often the first indication of tubercular consumption. As the strength and vitality have begun to fail when the age of forty-five or fifty has been reached (the ova being all gone, there can be no further extraordinary demands made on account of pregnancy), then conservative nature permanently stops the waste, and utilizes all the vitality the mother generates in building up her partially worn out body.

From the foregoing, would any person, *à priori*, expect from this most marvellously benign provision of nature, the dire results which are by many claimed for the menopause? *Reason* would assuredly answer no, and we do not think that *facts* can be found to seriously conflict with reason in the premises.

It will possibly be a matter of surprise to those who are not familiar with that department of literature, "Diseases of Women," that in the elaborate works of those who have made "woman, and her diseases," their special study, with all their advantages for prosecuting that study, *the menopause* is not mentioned at all by many of the most eminent of those writers and observers, and by others it receives only a brief passing notice, as of little importance. Among these authors are the celebrated names of Sir J. Y. Simpson, Churchill, Leishman, Thomas, etc., while Cazeaux and Tarnier (p. 114, 8th Am. Ed.) say : "In the majority of cases, all these troubles are quite slight and disappear promptly ; but,

in some instances, diseases, before latent, then declare themselves. It is this fact which, though much rarer than is commonly supposed, has obtained for this time of life, the name of the *critical period*. Its dangers have been wonderfully exaggerated, and modern researches prove, in opposition to the opinion of physicians who have preceded us, that the organic affections of the breasts, of the uterus, and of the ovaries, begin much more frequently before, than after the cessation of the menses." They do not mention insanity as one of the sequelæ. Ziemssen, in his *Cyclopædia of Medicine*, takes substantially the same view, and my own observation fully coincides with the authorities quoted. The weight of authorities unquestionably indicate more mental disturbance at the *beginning* than at the *ending* of menstruation. When the function begins there is generally considerable nervous excitement; which is also usually the case at every return of the period, and it could not be expected that a natural habit of thirty years' standing, together with the retention of vitality in the system, which during that period had been thrown away, would take place without some physical disturbance. *Occasionally* there is some cerebral congestion, which, unrelieved, might result in organic disease of the brain, as might any cerebral congestion ; but if such a case should occur from that cause, it would simply prove neglect ; the insanity would not arise *ex necessitate rei*, as a little depletion affords speedy and permanent relief.

It is possible that a latent strong predisposition to insanity might be developed into activity by the nervous irritability and excitement incident to either menstruation or the menopause ; but if there be no evidence of such insanity other than the commission of an atrocious crime, the perpetration of the heinous wickedness would not of itself be any evidence of insanity, especially when an adequate motive, such as revenge for cruelties and injuries endured, were shown. As insanity is the result of physical disease, brooding over long-continued, unmerited wrongs and cruelties would naturally lead to perversion of the moral nature, but such brooding could not produce pathological changes in the brain tissue.

Were the atrocity of crime regarded as evidence of insanity, then Catherine de Medici, the instigator of St. Bartholomew's Massacre, must have been very insane.

When a woman becomes insane at the age of forty-five or fifty, we believe the time is simply a coincidence. As there is no adequate cause in the menopause to produce an organic lesion of the brain, the conclusion appears to be inevitable that it cannot, *de nova*, cause insanity, *ex nihilo nihil fit*.

THE MEDICAL JURISPRUDENCE OF INEBRIETY.*

BY JOSEPH PARRISH, M.D., BURLINGTON, N. J.

Before entering upon the discussions of the subject we have in hand, it is essential to an intelligent view of it, that we agree upon the meaning and application of terms. The words, Drunkenness, Intoxication, Alcoholism, Inebriety, etc., are so carelessly and interchangeably used, that I shall confine myself to *Inebriety, the Disease*, as distinguished from other forms of alcoholic effects, and especially from the daily drunkenness of the saloon and the street. The typical inebriate comes into the world with the "mark of the beast upon his forehead," or it may be with a vestige only of an ancestral taint, which inclines him to seek indulgence in intoxicants of some kind. In other words, he is born with a decided alcoholic diathesis, or with a positive tendency to form one. That is to say, that where the hereditary impulse is not sufficiently potential to impart a complete diathesis, it leaves only an inclination or tendency to free indulgence, which, if continued in excess, will grow into a constitutional demand, as imperious and exacting as in the other case.

* Read before the Medico-Legal Society of New York, at its Annual Meeting, held December 14, 1887,

Such persons are moved at times by a *passion* for indulgence, which is beyond their control. It comes at intervals, it may be weeks, or months, during which periods of time they not only have no desire for alcohol in any of its forms, but a loathing and disgust for them. It is not the taste or appetite for them that is to be satisfied, but the effect. They long for a condition of oblivion, of forgetfulness of self, and of all selfish and annoying cares and troubles and moods. Neither have they any desire for convivial companionship. The glitter and glow of public resorts, where liquor is the prime factor of wrong and ruin, have no attractions for them. They are not tempted by such displays. The temptation, with which they are tempted, is within. It is subjective. It circles in the stream that gives them life. It may be likened to a battery that is hidden somewhere in the cerebral substance—connected by continuous fiery wires, with a coil in every ganglion, from whence they continue to extend—attenuating and distributing, as they go, reaching after the minutest nerve fibrils, which need only a throb from the inborn impulse, to transmit a force that quivers in every muscle, and burns in every nerve, till the victim is suddenly driven from himself, into the ways of unconscious debauchery. Technically, it is a brain or nerve storm, which dominates all other conditions, and leaves the patient, for the time, without any power to control his own acts.

Dr. J. M. Howie, of Liverpool, England, says, that such a man possesses no power of resistance, "that he

drinks as naturally as a fish swims, or a dog barks!" Dr. I. B. Hurry, also of England, describes the craving for drink as "coming in the form of a paroxysm, which runs a more or less cyclical course." He calls it "uncontrollable drunkenness!" and quotes Dr. Hutcheson as saying, "That this sort of mania differs entirely from drunkenness, the diagnostic sign of the disease being an irresistible propensity to swallow stimulants in enormous doses, whenever and wherever they can be procured. This form of inebriation is often, if not usually, found in our most useful professions—men of letters and culture, of refined tastes and manners, who scorn the low-lived friendships of the groggery, and who vainly strive for liberty."

Dr. Norman Kerr, of London, the faithful friend of the inebriate, and eloquent advocate for legislative aid in his behalf, has used the following most impressive language: "The struggle of the intemperate for freedom, is a combat more terrible than any other fight on earth. It is more arduous than the most celebrated of those, the praises of which have been from remotest ages immortalized by undying verse." It remains yet to notice a most important and prominent symptom of inebriety, which, together with periodicity, constitutes its real pathognomonic sign, namely, loss, or suspension of consciousness and memory, without sleep or stupor, during which the patient acts automatically, being without knowledge of his actual condition, at the same time appearing to be, and to act, naturally. I have had numer-

ous cases of the kind, of which the following are examples.

G. A., a young gentleman who resided about fourteen miles from the city, left home to visit friends, and to attend to a few errands, agreeing to return by an early evening train. He called on his friends, attended to his business, accomplishing all that he intended to do on leaving home, but did not take the early evening train to return. Instead of doing so, he unfastened a fine looking horse and vehicle from a hitching post on the sidewalk, mounted the carriage, and drove safely to his home, fourteen miles away. He crossed the river by a bridge, avoided collision with vehicles of all sorts on a crowded thoroughfare, paid toll at all the turnpike gates through which he passed, and reached home in safety and in good season, with the horse in good condition, showing that he had not been abused by fast driving. He was taken to the stable, and the young man retired to his room. In the morning, having slept off the effects of a few potations of whiskey, he met his family in the breakfast-room, having no knowledge of having reached home in the way he did, and was surprised to find in a morning paper an advertisement for the horse and wagon. Ashamed and humiliated by the discovery, he proceeded at once with an attendant to answer the advertisement. The owner, being a physician and taking in the situation, was thankful to find his favorite horse unabused. The two gentlemen, shaking hands and congratulating each other upon the safe and satisfactory

issue of a bold and reckless experiment, with abundant apologies on one side, and full forgiveness on the other, separated, having left for you and me a record of an interesting case of cerebral automatism, to become a part of the proceedings of this society.

Another, Professor W——, a Christian gentleman and scholar, a popular and successful teacher. The passion comes to him unbidden, and even without previous thought on the subject, and sometimes suddenly. He may be engaged in his study preparing to meet his class, and there comes over him a seeming cloudiness which darkens his mind, and he seems lost to things about him. Without seeming to know why, he leaves his study and his home, seeks the village near which he lives, takes a few drinks of whiskey, casts aside all sense of self-respect, all care for the opinion of others, resists all appeals to stop and stay, and with a recklessness unknown to him in a state of sobriety, abandons himself to his cups and their consequences. During his carouse, he hires a horse and buggy, drives into the country, visits friends, dines or sups with them, remains till the next day, returns to the village, pays for his horse and carriage, settles his saloon bills, and when quite himself again, goes to his home, seats himself in his study, resumes his preparation for his classes, without remembering anything that was done during his absence. The interval between the cloudy feeling in his study and his return, sobered, mortified, and overcome with self-reproach and remorse, is a complete blank.

My friend and colleague, Dr. Crothers, of Hartford, Conn., has brought to light a number of similar cases, and published them in a valuable brochure which every student of this subject should read; it is called "Cerebral Trance, or Loss of Consciousness and Memory in Inebriety."

The phenomenon of unconscious cerebration, of which I have produced two examples, is seen, and sometimes in a more marked degree, in the disorder known as Somnambulism, which has no connection with alcohol as a factor, and yet its exhibition of amnesia under remarkable conditions leads to the suspicion that both disorders may be traced to a want of equilibrium in the same nerve centres, or in those that are closely allied to each other, by which, in both, there is impaired consciousness. Dr. Clouston tells us of one, Simon Fraser, a highly neurotic subject, who had been a sleep-walker all his life, and did all sorts of things in accordance with his illusions and false beliefs, during his somnambulistic state. He once went up to his neck in the sea of Norway, and did not awake. At last one night, while in a somnambulistic state, he seized his child, to whom he was much attached, thinking it was a white animal, and dashed it against the wall and killed it.*

From Dr. Crother's pamphlet we learn of a record made by Dr. Forbes Winslow, "Of a somnambulist who, while walking about, his night dress caught fire, and with

*A full account of the case and the trial, is given in *The Journal of Mental Science*, Vol. XXIV., p. 451.

excellent judgment and coolness, he threw himself on the bed and extinguished the flames, resumed his walk, and next morning had no knowledge or memory of the event, and wondered greatly how his dress became so charred.

Another exhibit of cerebral automatism, whose consciousness was either obliterated or suspended, is the most remarkable case of the Massachusetts farmer. His rye harvest had been carefully stored ; and when the threshing season came, he arose from his bed, went to the barn, climbed to the mow, and threw down a flooring of sheaves ; threshed them, raked the straw away, and deposited it in a place provided for it, swept into a heap the rye, and after repeating this act four times, returned to his house and bed, and in the morning was surprised to find that he had threshed several bushels of rye while in the state of automatism.

THE SCIENTIFIC STUDY OF INEBRIATE CRIMINALS.*

BY T. D. CROTHERS, M.D.

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The question of the sanity or insanity of an inebriate criminal in court has so far been decided on theory, law and precedent. Medical testimony is made to conform to legal theories and court-rulings, irrespective of all other conclusions. Courts have dictated to science what the test of responsibility should be, and given definitions and explanations of abnormal conduct, requiring the medical witness to bend his views to such theories. Not only has the law laid down arbitrary lines, as if they were fixed principles of nature, but it has assumed to decide all questions of brain health on the same basis, accepting scientific evidence only so far as it sustains such theories.

Medical testimony in courts indicating insanity, that is not sustained by overwhelming evidence, comes under the suspicion of prejudice in the prisoner's favor, or incompetency of the witness. The practical result from such errors is a degree of confusion, injustice, and great wrong, that is a sad reflection on the intelligence of both

* Read before the Medico-Legal Society, New York, Dec. 14, 1887.

the medical and legal professions. My object is to call attention to the *inebriate criminal*, and to indicate the scientific methods by which such cases are to be studied, and to show some errors which have followed from the failure to understand the facts in these cases.

The inebriate appears in court as a criminal, the crime is admitted, and the question is raised of his mental soundness. It is asked: Did the prisoner at the time of committing the crime realize the nature and consequences of his acts and conduct? Had he the power of self-control to have done otherwise had he so willed? Was the inebriety and crime voluntary and with motive? or involuntary and without motive? From the answers to these inquiries, the mental health and condition of the prisoner is determined.

The scientific expert who is called to answer these inquiries should approach the problem without any knowledge of the legal rulings and questions of responsibility of such cases, held by courts. His province is simply to examine the facts, and the conclusions which they seem to indicate, which are in harmony with the laws of nature.

As a scientific expert of the phenomena of the mind and its morbid manifestations, he is not called to determine questions of legal responsibility, but must point out the facts, show their accuracy and meaning, no matter what the consequences or conclusions may be. This cannot be ascertained from newspaper reports, statements of counsel, or slight examination of the pris-

oner. Such a study, to be accurate, should begin and follow a general order of facts, as follows :

1. Legally the crime is first studied, but medically this order is reversed. First, study the history of the criminal, then the crime. Often a history of the criminal distinctly indicates the nature and character of the crime. The *heredity* of the inebriate criminal should be the first object of study. From a knowledge of the defects and diseases of the parents, of their strength, conduct and character, a general conception can be had of their descendants.

2. A study of the prisoner's early growth, culture, training, nutrition, surroundings and occupation, reveals many facts indicating the brain capacity or incapacity to act normally.

3. The inebriety of the prisoner still further points out his mental condition. The origin, duration and character of the drink impulse, are most important facts for minute study.

4. The nature and character of the crime, the associate circumstances, including the inebriety, all bring additional evidence pointing out the actual mental state of the prisoner. From a systematic study of this kind, the prisoner and his crime will appear clear and distinct. Not as an outburst of vice and wickedness, but as the natural sequence of a long, progressive march of physical events. Inebriety and criminality are not accidents, but the products of causes, the outcome of conditions, which have grown up in obedience to laws that move

on with progressive uniformity. This is illustrated in the history of every case which can be followed along a continuous chain of events, dating perhaps from heredity, degenerate growths, up to inebriety, then to crime. Both the crime and inebriety are but symptoms of disease and degeneration, culminations of events whose footprints can be traced back from stage to stage. Attempts to apply dogmas of free-will, and show at what point powers of control existed or were lost, where consciousness and unconsciousness of events joined, or where sanity or insanity united, is to attempt the impossible. To the scientific man, the knowledge required to determine these facts extends far beyond the widest range of human intellect.

In the efforts to determine the mental soundness and brain health of a prisoner in court, there are certain general facts already established that will serve as a foundation from which to date more minute and accurate studies.

1. The inebriety of any person is in itself evidence of more or less mental unsoundness. Alcohol, used to excess and to intoxication, is always followed by changes of brain circulation and nutrition. Degrees of mental impairment and paralysis always follow, whether recognized or not.

2. In a large proportion of cases inebriety is only a symptom of slow, insidious brain disease, particularly general paralysis, also of many forms of mania, dementia, and other brain degenerations.

Here, notwithstanding all appearances, the inebriate is diseased and unsound mentally.

3. When crime is committed by inebriates, growing out of the inebriety or associated with it, the probability of mental disease and some form of insanity is very strong. Inebriety always favors and prepares the way for the commission of crime.

4. Whenever it appears that persons have used spirits to intoxication, for the purpose of committing crime, this is evidence of a most dangerous form of reasoning mania, requiring the most careful study.

From these general facts, which should govern the expert in such cases, I turn to indicate the great injustice which has followed in some late prominent trials, from the failure to realize and apply these principles.

Peter Otto, a chronic inebriate, shot his wife in a drink paroxysm. On the trial, the insanity of the prisoner was raised. Several medical experts testified to his sanity, and explained his unusual conduct as that of a simulator. He was found guilty and sentenced to death. An appeal was taken, and a year later I examined this case. Beginning with heredity, the prisoner's grandfather, on his father's side, and grandmother, on his mother's side, were both insane; the former died in an asylum. His father was a paroxysmal inebriate, and a morose, irritable man, who died in Andersonville prison. His mother, still living, is a passionate, half insane woman, being irritable and suspicious, and drinks beer. One of her sisters died insane. The prisoner's early life was one of great

wretchedness and neglect—in the street and saloon. He was ill-nourished, and drank beer at home and wherever he could get it. At ten he was injured on the head, and was treated in a hospital for several weeks. At puberty he drank to intoxication and gave way to great sexual excess. Later, he was married in a state of great intoxication and unconscious of it at the time. For ten years before the crime he drank to excess as often as he could procure money to pay for spirits. He grew quarrelsome, suspicious and very irritable, and at times acted wildly. He had the common suspicion of his wife's infidelity, without any reasonable basis. He had tried to kill himself on two different occasions, by the most childish means. He was injured again on the head and complained of bad feelings ever after. He was arrested on six different times on complaint of his wife and mother for violence when intoxicated, and was confined in jail from ten to sixty days. Two months before the murder he was placed in jail, suffering from mania. The jail physician called his condition alcoholic insanity. The murder followed, while drinking to great excess, and grew out of a quarrel with his wife. He made no effort to run away or conceal himself. In jail he developed religious delusions of frequent personal conversations with God. Heard voices and saw lights which he interpreted as God's messages to him. His appearance and conduct indicated great mental enfeeblement. My conclusion of insanity was sustained by the history of the heredity, growth, surroundings, inebriety, general

conduct and delusions. A special commission of physicians decided that he was sane and fully responsible, and on this conclusion he was executed.

The *second case* was that of Charles Hermann, a chronic inebriate, who, while under the influence of spirits, threw his wife down on the floor, cut her throat, and placed the body on the bed. That and the two following nights he slept in the bed with the dead body, going out in the morning and returning at night, acting as usual, drinking and manifesting no excitement or consciousness of what he had done. Three days later the body was discovered ; he described all the circumstances of the homicide, gave no reason or explanation, except that she would not stay in when he wished her.

The defense was insanity from spirits, and alcoholic trance. This was denied by the medical witnesses for the people. From my study of the case the following facts were undisputed :

1. Hermann was a German, forty-two years of age, a butcher by trade. No hereditary history was obtained. He was very reticent, and could give no clear history of his past.

2. About twenty years ago he began to drink to excess. When under the influence of spirits he was sullen, irritable and suspicious of every one, his character and conduct were changed ; he had suspicions of his wife's infidelity. When sober no reference to this delusion was made ; he seemed to be a kindhearted man.

3. For the past five years he has greatly changed in

every way. He did not work much, tramped to Chicago and back, drank at times to excess, was very quarrelsome with his wife and others, when under the influence of spirits. Was rarely stupid when intoxicated, but was heavy and dull. A week before the murder he drank more than usual.

4. The crime was committed automatically and in the same way he had been accustomed to kill animals. He seemed oblivious of the nature and character of the crime, and made no efforts to conceal it, or escape, but went about as usual, apparently unconcerned. This same indifference continued up to his execution. As in the former case, a commission decided that he was not insane, and was responsible. Both his inebriety and the peculiarities of the crime were ignored in this conclusion.

Case three was Patrick Lynch, a periodical inebriate, who killed his wife in a similar indifferent manner. The defense of insanity was urged, and opposed by the same confused medical testimony. A marked history of heredity, embracing insanity, inebriety, and idiocy, was traced back two generations. The prisoner grew up in bad surroundings, was an inebriate early in life. At the age of thirty he was a periodical inebriate, with a drink period of twelve or fifteen days, during which his conduct was markedly insane. He killed his wife by striking her on the head with a board, under no excitement and perfectly cool, then went to the station and gave himself up, giving no reason for the act. He had

not quarrelled with her or exhibited any anger. He had delirium tremens three times at intervals before the crime was committed, and had manifested marked changes of character and conduct. When sober he was very kind ; when drinking he was treacherous, violent and dangerous. He was found guilty, but finally sent for life to prison.

The *fourth case* was that of William Enders, an inebriate, who rushed out of his house and shot a passing stranger, without a word or provocation. The history of epileptic and alcoholic heredity was in the family in both parents. His early life was in a poorhouse, and later an errand boy in a hotel. At twenty he was an inebriate, with distinct drink paroxysms. These were attended with intense delusion of persecution.

The crime was committed during one of these attacks. The defense was insanity, but the jury decided him guilty, on the testimony of the medical witnesses for the prosecution, and he was executed.

These four cases are not uncommon or different from many others appearing in court every week. I have presented them to show both the failure of medical testimony, and a correct legal conception of such cases. The medical testimony in such cases fails in not making an independent research in each instance, to ascertain the facts, no matter what the conclusions are. The physician goes into the court-room with the expectation of giving a semi-legal opinion, along some line of theory and law ; he attempts to mark out conditions of responsibility and fails, hence his testimony is confusing and worthless.

In each of these four cases the medical evidence was founded on theory and not on the facts of the case. The legal treatment was also imperfect and unjust for the same reason.

The teachings of all scientific research are in unison to-day concerning the disease of inebriety, and also that this disease of inebriety may merge into criminality. It is obvious, then, when they are found associated, only a full, exhaustive inquiry and study of the facts can determine the sanity of the case.

The question of the sanity and insanity of inebriate criminals must be decided by an appeal to the facts, gathered by scientific experts, and not from any theological or judicial theory, however ancient in history or universally accepted by lawyers and scientists.

The question of responsibility in any given case must be answered exclusively from its scientific side, apart from all legal conceptions and tests in such cases. The inebriate criminal belongs to that obscure class of border line cases who must be studied, both legally and medically, from the facts in their history.

From every point of view it is apparent that the present treatment of the inebriate criminal is far behind the scientific teachings of to-day. The time has come to put to one side all mediæval theories of the vice and voluntary nature of inebriety, and study each case more thoroughly and from a wider range of facts, estimating the degree of sanity and responsibility by physiological, pathological and psychological methods.

PERSONAL RESPONSIBILITY AS AFFECTED
BY ALCOHOLIC INFLUENCE.*

BY T. L. WRIGHT, M.D., BELLEFONTAINE, OHIO.

I will speak of the responsibility for crime committed when alcohol enters as a factor in its inception—as well as a common incitement to crime—from two points of view only: First, when nerve *function* is impressed and embarrassed by alcoholic influence; and, second, when nerve *structure* is affected through alcoholic influence.

1st. As to nerve FUNCTION, I am not assuming anything when I say that it is the universal verdict of science, that accurate knowledge is wholly dependent upon accurate consciousness; that is, consciousness healthy, not morbid in kind; and complete, not fragmentary or deficient, in degree.

Now, what is consciousness, and what are its conditions?

“Consciousness,” says Wundt (*see Ribot, German Psychology, p. 247, et. seq.*), “psychologically, is a unification, although itself a unit.” There is no organ or “center” of consciousness. The entire organism is essential to its completeness. “Thus, perception, representation, idea, feeling, volition, form the continuity called consciousness, of which only tautological definitions can

* Read before the Medico-Legal Society, at January Meeting, 1838.

be formulated....Taken as a whole, the act which physiological psychology seeks to interpret"—and upon which the question of responsibility is pending—"embraces the following moments: First, impression; second, transmission to a nerve centre; third, entrance into the *field* of consciousness (large but vague "perception"); fourth, passage to the particular *point* of "apperception" (definite, no longer vague); fifth, voluntary reaction; sixth, transmission by the motor nerves."*

Careful authorities agree that alcohol is a poison, the most obvious effect of which is to induce paralysis. This was pointed out by Dr. T. W. Poole, of Ontario, in a work published in 1879. Prof. A. B. Palmer, of Ann Arbor, Mich., discusses the same thing in the *Journal of Inebriety*, July, 1884. Doctor Sidney Ringer, of England, declares that alcohol is not a stimulant as comparable with its radically depressant properties. He says that the ultimate effect of any considerable quantity of alcohol is paralyzing. Doctor C. H. Hughes, of St. Louis, in a letter to the writer, upholds the same doctrine, and believes it to be of very great import.

But it is not necessary to rely upon authorities in this part of our discussion. Everybody is familiar with the staggering gait and the distorted countenance of the drunken man—evincing partial paralysis of the muscular system. Everybody is aware of the confusion and incoherence of thought which demonstrates the repression in functional power of the nerve centres of rational movement. Every-

* Ribot, pp. 246-248.

body is cognizant of the lying and treacherous propensities of the drunkard—showing a partial paralysis of the nerve centres which preside over the manifestations of the moral nature : and falsehood is the corner-stone of the whole edifice of crime.

Universal paralysis, when complete, is death. But universal paralysis, when incomplete, is disorganization of function. It is absence of perfection, in the essential details of all the departments of a sound individuality. How can a man, handicapped by deficiency and incapacity of nerve throughout his whole organism, correctly judge and discriminate in difficult and involved questions? The consciousness of sound, for instance, is one of the most simple and plain of all. And yet the mind must be alive to the distinctions and qualities of *pitch*, *intensity* and *timbre*, in order to determine the quality of sound with accuracy. These several properties depend upon the “number, amplitude, and form of certain atmospheric vibrations.”

In regard to the capacity of a drunken man, by an act of volition, to raise himself above the level of his drunken state—and upon the possession of which capacity the question of his responsibility turns, it is only necessary to say this : Since the beginning of the world no example has been known of a drunken man improving upon the condition and phenomena of his drunkenness. In every other possible relation, the same mind steadily improves and advances upward ; but the “drunk” of three-score years and ten is, in all its essential features and

exhibitions, the “same old drunk” that was characteristic of the individual at the age of twenty or thirty years. In other words, *the drunken man is not his own master*. Alcohol dominates him, and guides him in its own way.

2nd. As to nerve STRUCTURE, alcohol interferes with the co-ordinate or co-equal nutrition of the physical tissues which enter into the composition of the human body. Substantial growth in certain directions is morbidly increased; and the result is, that a relationship is established amongst the several bodily parts which is not symmetrical. The particular structure which mainly takes on inordinate and unhealthy growth, is the fibrous or fibro-cellular substance; or, as it is called in medical parlance, tissue. It is therefore proper to inquire specifically, what is the fibro-cellular tissue, and what is its office? As I wish to be plain, rather than technical, I will say in general terms: It is the gray, dense structure in the body which holds and binds the entire organism together, giving to it shape, tenacity, and elasticity. It enters into the substance of the liver, giving it strength and form. It enters into the mechanism of the kidneys, giving them strength and form. It enters into the texture of the brain, giving it strength, tenacity and form. And so likewise, it enters into the substance of every organ and structure of the body—of the muscles, bones, lungs, heart, skin, and so on, giving all of them strength, protection, tenacity and form. And besides, this same fibro-cellular tissue binds—through its modifica-

tions in shape and position, as by ligaments, bands, leaders, etc.,—the various portions of the body into one grand and harmonious whole. In every organ of the body, the fibrous tissue is liable to be substantially modified and permanently changed in form through the toxic power of alcohol.

It is not surprising, therefore, that Dr. Bartholow declares that “few structures escape the deformative influence of alcohol when it is habitually taken into the system. The kidneys, the stomach, the liver, and the brain, all exhibit,” the doctor continues, “an increase in the substance of the fibro-cellular tissue which is found within them.” And Dr. Sieveking, of London, in his work on Life Assurance, says: “There is scarcely a degenerative condition of the body that may not result from the habitual use of ardent spirits.” I economize space by declaring that the authorities are a unit on this point.

When, therefore, the complexion becomes muddy, and the eyes tinged with a greenish hue; when the appetite and spirits fail, and an incessantly recurring jaundice colors the skin of the habitual tippler, we know that the liver is becoming structurally injured through the mischievous effects of alcohol upon the cellular tissue which enters into its structure.

When we perceive the habitual drinker—previously of good report in most respects—beginning to steal; or when we perceive in him some surprising lapse in decency and public morality, we know that the fibrous tissue

within the brain is being injured by alcoholism. We know that nerve cells are being squeezed and oppressed by the intrusion of a foreign substance; and at a later stage we know that nerve corpuscles are being transformed into fat, or are absorbed altogether; that brain fibres are torn in sunder, and that the blood-vessels of the brain are strangled and obliterated. We know that in a few months the scene will close upon a paralytic dem—imbecile and driveling.

Such is a partial description of the power of alcohol carried to its logical conclusions. While a portion of habitual inebriates, only, reach this woeful end, it is yet proper to understand its occasional reality; for the tendency of *habitual* drinking, even though called moderate in degree, is always, to some extent, greater or less, in this direction.

But in impairing the constitution, the worst effects of alcohol must take place within the brain. The cellular structure within the brain, at first morbidly and inordinately increased in volume, at length begins, by little and little, to contract. To illustrate: After a severe burn is healed, the scars are apt to appear prominent in the form of unsightly welts and ridges. These scars are one form of cellular tissue. But in time these prominences will disappear. The scars shrink, very considerably, becoming, at the same time, very hard and tense; and not infrequently, by drawing portions of the body out of their natural relationships with each other, they produce serious inconvenience and deformity. A similar contrac-

tion in the overgrown fibrous tissue of the liver produces the "hob-nail" liver of the habitual drunkard.

In a manner exactly parallel, the redundant fibrous substance in the drunkard's brain shrinks, and it involves and strangles some of the brain's blood-vessels. Thus, nerve cells and nerve centres perish through lack of nutrition—their blood supply being cut off. This contraction of the fibrous structure within the brain may even tear nerve fibres apart. And in many other ways it imposes modifications, and, of course, degradations, on the mental and moral activities.

Usually, these lapses and defects in mental and moral action are referred to a willful disregard for the principles of good sense and good morals. But the microscope will dispel that misapprehension. It will disclose physical degeneration in nerve cells, nerve fibres, and nerve centres, sufficient to explain some misconduct as the child of disease, rather than of criminal will.

After a time the damage to the central nervous tissue (when not excessive) becomes assimilated, or adopted, by the constitution. That is, the human constitution becomes modified. It takes on new and inferior characteristics, and occupies a plane of existence lower than belonged to its original nature. The important point is, this bad constitution is liable to be reproduced in posterity. Quite likely the newly-transmitted constitution will differ in the forms of its exhibition from its parent. It may take on some of its kindred forms. There may be, for example, defective intelligence, as imbecility, or

defective physical structure, as hare-lip, or club-foot ; or a defect in one or more of the senses, as deafness, and, of course, dumbness ; or there may be defect in the brain centres of co-ordination, through which the moral nature and the sense of personal identity, and the ideas of duties and responsibilities are exemplified. Through defects in the physical instruments of the moral nature within the brain, there is apt to be developed, through heredity, the criminal constitution.

The property of alcohol, of inflicting physical unfitness upon body and brain, opens a field of disaster, whose extent is absolutely unlimited.

I have stated a few of the effects of alcohol upon the human body and human mind. It is for others to make specific deductions, and draw conclusions from them, with reference to their bearing upon the personal responsibility of the inebriate.

PROHIBITION AND INEBRIETY.

BY MARY WEEKS BURNETT, M.D.

Member Medico-Legal Society, President National Temperance Hospital, etc.

In the many problems which have arisen through the intermingling of labor, in law and medicine, satisfactory solutions have been most readily secured when the *underlying causes* have been made the basis of study. In view of the fact, that there now exist many and great differences of opinion, in the Medical Jurisprudence of Inebriety, we need to keep prominently before us the *causes of*, as well as the *remedies for*, inebriation.

Inebriety, or drunkenness, is a condition of mental unsoundness or derangement, induced by the use of intoxicating liquors. The *law* assumes, that he who, while of sound mind, puts himself voluntarily into a condition in which he knows he cannot control his actions, may be considered to have contemplated the perpetration of his crime, and should suffer the legal consequences of his acts. Drunkenness being apparently a deliberative or voluntary act, of a presumably sound mind, the law does not admit that it is a disease.

It is a rule in *medicine* that a mentally diseased or disabled person is incapable of responsible motive or intent, and should not be held responsible for acts committed

while so diseased or disabled. Medicine assumes that, as inebriety or drunkenness is manifestly a condition of unstable or diseased mind, it is, therefore, a disease, and the inebriate should be shielded from the legal consequences of his acts. Each view contains much truth, yet it is evident that the differences of opinion, based as they are *upon a study of results alone*, are irreconcilable. Into each case the elements of disease or of crime may both or singly enter. The complications will forever present new opportunities for disagreement, and no conclusions can be reached except by the yielding of one side or the other.

It is truly said, that inebriety and criminality are not accidents nor causes, but the products, the *results*, of causes.

What is the cause of inebriety? Undoubtedly, heredity and surroundings have a large predisposing influence, but all *medical* authorities agree that the immediate cause of the *disease* of inebriety is *intoxicating liquors*.

Legal authorities agree that the immediate cause of the *crime* of inebriety is *intoxicating liquors*.

Medicine and law, then, are in complete accord upon the *cause* of the disease and crime of inebriety. May we not hope to agree upon the remedy? The highest judicial power in the land, the power of which Washington said, "it is the chief pillar upon which our government must rest," has clearly emphasized a remedy.

The Supreme Court of the United States, in its recent

decision based upon the 14th amendment, has declared that "the public health, the public morals and the public safety is *endangered* by the general use of *intoxicating drinks*, and that it is a fact established by statistics accessible to every one, that the disorder, pauperism and crime prevalent in this country, are in some degree at least traceable to this evil."

And it further states, in an opinion from which there can be no appeal, that "the people of a State have a right, under the 14th amendment to the Constitution, to absolutely prohibit the manufacture and sale of intoxicating liquors for other than medical, scientific and manufacturing purposes." Here, then, seems to be outlined a medico-legal remedy for inebriism: the suppression of intoxicating liquors as a beverage—in a word, *prohibition*.

Three prominent objections have been raised against prohibition as a remedy for inebriism:

1st. That prohibition is impracticable.

2d. That other measures present a more satisfactory basis for the Medical Jurisprudence of Inebriety.

3d. That prohibition is not necessary.

Are these objections sustained by facts?

1st. The Supreme Court of the United States has declared that prohibition is entirely practicable. In certain places, where high State officials vie with each other in violations of the law, it is true that the law may not be enforced, but there is abundant evidence that wherever there is harmonious action, among the educated

forces of any community where prohibitory law has been secured, the law is a success.

2d. That other measures present a more satisfactory basis for the medical jurisprudence of inebriety.

Among the most popular of the measures now being tested are moral suasion, high license, local option, jails, penitentiaries, inebriate and insane asylums. What real promise is there in these ?

Moral suasion has little effect upon minds and bodies writhing in the clutches of the drink power. Taking the pledge will not redeem a drunkard, nor will it prevent a man from becoming one.

License, high or low, makes intoxicating drink lawful, and the drinking places are by it made the fashionable and legal breeding-ground, of disease and vice and crime. Local option can be voted in as a law one year, and voted out the next, and in its very instability there is great danger. We can name one of many instances. A. R., a man of talent, with inherited narcotic susceptibility, remained for years in a local option county, at a great pecuniary disadvantage, for the sake of the safety it afforded him from his appetite. But the liquor traffic eventually prevailed over this temporary local option law, and the man is now in prison for life as a result of crime committed because liquor was not kept away from him.

Asylums for the cure of inebriates are necessary now. They serve a needed end in shutting the patients away from liquor. But suppose we could shut the liquor

away from the patients. The very large proportion of the now victims of inebriism would, under careful non-alcoholic medical supervision, be enabled to take their places with the wage-earners and producers, instead of, as now, being helpless dependents upon public and private charity.

Our jails and penitentiaries are full of men, women, boys and girls, committed for the crime of inebriety. There is no assurance from past experience that they will not, the moment they are free and again under the influence of liquor, commit as grievous, if not greater crime. More than this. Great numbers of those of neurotic and narcotic susceptibilities, of hereditary and acquired hyper-sensitive organisms, are daily and hourly swelling the ranks of this great multitude, before which the world already stands appalled.

Temporizing measures give no promise of a true solution of the problem.

3d. May not, then, the prohibition of intoxicating liquors as a beverage be necessary?

An authority says that ninety-five per cent. of those who leave the Concord (Mass.) Reformatory, go out with a firm resolve to do right, and if they backslide it is because of the evil influences and drink habits to which they return. Other institutions of a like nature furnish practically the same statement. Did space permit, I could cite a large number of cases which have come under my immediate observation, of men and women leaving our hospitals, asylums or jails with firm hope in

a better future, who, within twenty-four hours, have again become hopelessly overcome by the temptations to drink which have met them at every step.

The *will* of the inebriate is helpless and imbecile in the presence of temptation and opportunity. In the presence of liquor the inebriate is uncontrollable, except by lock and key.

Which is the greater wisdom, prevention or cure ?
Which should be under ban, the liquor or the man ?

Prohibition will remove from the inebriate both the temptation and the opportunity.

Under the ruling of the Supreme Court, it is now in our power to speedily make it impossible to obtain intoxicating liquors as a beverage. Suppose the neurotic and the narcotic susceptibles, the highly-endowed psychical hyper-sensitives, the strong in animal forces, but weak in will cases, could not have the taste for liquors aroused. We would still have the insane and the criminal to deal with, but in fewer numbers, and the disease and crime due to inebriety would no longer be a perplexing complication.

Shall we, who hold the wealth and the health of the people in our hands, foolishly waste our forces struggling in such a mire of bewildering phraseology as the inebriety of insanity, the insanity of inebriety, voluntary and involuntary intoxication, delirium tremens and other alcoholic seizures, when so simple and absolute a remedy is at hand ?

These neurotic cases which so easily drift into disease

and crime, cannot be the subjects of the disease and crime of *inebriety* until they have come under the influence of intoxicating liquors. There may be brain incapacity or mental unsoundness, but the *disease* of *inebriety* cannot be grafted upon these conditions without intoxicating liquors. *They cannot have the disease if they cannot get the liquor.*

Inbreism, whether manifested in disease or crime, or both, can be wholly extirpated from the great catalogue of medico-legal problems. Is there any valid excuse for its continuance?

*THE POSSIBILITY OF AIR IN THE HEART IN
CERTAIN CASES OF INFANTICIDE.*

BY F. W. HIGGINS, M.D., Cortland, N. Y.

In February, 1888, Maurice B. Congdon was tried in the Court of Oyer and Terminer, in Cortland County, for the crime of infanticide. On February 10th the jury brought in a verdict of manslaughter in the second degree, and he is now serving a sentence of twelve years' imprisonment at Auburn.

There is little serious difference of opinion in regard to the main facts of the case. The mother of the infant was Nora Congdon, seventeen years of age, daughter of the defendant. The defendant was probably the father of the infant by his own daughter. One child had been born of the same parent age, two years before, and buried immediately. This last infant was born April 30, 1887, while the girl was alone in a room ; she called to her father, who came up into the room and cut the umbilical cord close to the body, as appears by the girl's testimony before the Grand Jury ; he then grasped the child's neck by the thumb and finger of one hand, retaining his hold until life was extinct. With the other hand he laid a cloth in the bottom of a tight tin pail, laid the child in the pail on its right side, still retaining his hold upon the child's neck, threw the cloth

over it, took the pail by the edge and carried it out of the house. Within an hour he buried the pail and its contents in a field two feet below the surface.

On May 21st, twenty-one days after its burial, it was exhumed, and the writer assisted the Coroner, George D. Bradford, in the post-mortem examination. It was evidently a full term male child, $19\frac{3}{8}$ inches in length; the weight and measurements, and the appearance of the nails, testicles, hair and skin corresponding. It had been born alive, as shown by the evidences of complete respiration. The lungs were light in color, completely filling the enlarged chest. The anterior borders were rounded, that of the right lung within one-quarter of an inch of the median line, the left three-quarters of an inch; crepitant in every part, and every part floating high above the water. The pressure of 150 pounds applied twice to a portion from the base of the lungs, did not destroy its capacity to float. In short, if the hydrostatic test can ever prove anything, complete respiration had occurred. An additional sign of live birth was the congestion and extravasations which had occurred above a line about the neck. Also, if the opinion of the writer be allowed, the appearance of air in the heart.

The main blood vessels of the heart had been ligatured in floating the heart and thymus gland, with the lungs, for the hydrostatic test. On cutting into the cavities of the heart, the auricles were found nearly empty. Both ventricles were found filled with dark fluid blood mixed with an abundance of air bubbles or bubbles of gas. The

significance of these was debated at the time, but not clearly understood until it was too late to make some observations which would render this paper more complete.

Upon reflection, for there seems to be little literature bearing upon this subject, there suggest themselves but three possible sources for this appearance of air mixed with the blood of the heart.

Perhaps the most natural theory is that the appearance was due to gas, the result of decomposition. In answer to a letter of inquiry, Professor A. L. Loomis, of the New York University, writes that he has seen gas in the heart, as the result of putrefactive changes, quite early. This infant had been dead for twenty-one days. But it lay in a tin pail buried in the clay subsoil, two feet below the surface. The weather had been dry and the ground was yet cold. In Wharton and Stille the statement is found that the changes which would occur in one day from exposure to the air, would require eight days in ordinary burial. Considering the circumstances of burial in this case, we should expect to find about the same evidences of putrefaction that would occur from two days' ordinary exposure. The signs of putrefaction actually found were simply small spots of greenish discoloration along the right side and on the outer side of that arm and leg. The epidermis was loose and easily rubbed off over the suggillation on the right side. There was no odor of decomposition discoverable—there were no serous or gas blebs anywhere in the interior of the body ;

there was no softening of any organ except the brain, which would not retain its shape when the membranes were removed. At the base of the brain was an extravasation of blood estimated at one ounce. The exact location of this was in the sub-arachnoid space in the left middle and posterior fossæ of the cranium and also filling the upper part of the spinal canal. This blood was dark and fluid, but not mixed with air or gas, although the brain contiguous to it was softened. It is possible that putrefactive germs may have gained entrance at the cut end of the umbilical cord, and induced a change in the blood even as far as the heart.

The cut end of the cord, however, showed no evidence of decomposition; a little dark fluid blood was noticed upon it. A few experiments, made by exposing beef blood to the action of the air, seemed to indicate that gas is not developed easily from it; at least, until the odor becomes unbearable.

A second barely possible origin for the air found in the heart, is suggested by the following case reported in Beck's Medical Jurisprudence, Vol. II., page 213. It reads as follows:

“In the case of a woman who had been strangled per manum by two men, Littré found the tympanum of the left ear lacerated, and from it flowed about an ounce of blood; the vessels of the brain were unusually turgid; red blood was extravasated in the ventricles, and also on the base of the cranium; the lungs were greatly distended, and their membranes very vascular. Not more

than an ounce of blood, however, was contained in the right ventricle of the heart, and it was fluid and frothy, like that of the lungs."

In this case the air must have found its way through the parenchyma of the lungs, into the pulmonary veins, and so into the heart. If this were possible in any case, it did not occur in this one. There was no sign of rupture of the lung substance. The lungs were not even engorged with blood. The absence of overfilling of the internal organs of the chest and abdomen is accounted for in this case by the open umbilical arteries, affording an outlet for a certain portion, and by the large amount extravasated at the base of the brain, and filling the veins of the brain and head. Also the less relative amount of blood in the infant must be taken into consideration.

The only theory remaining to account for the appearance of air in the heart, would be that it was drawn in through the cut end of the umbilical vein during the respiratory efforts while strangling.

That air may enter a vein, reach the heart, and cause alarming symptoms or sudden death, is well known to surgeons. The circumstances necessary for its occurrence are the opening of a large vein near the heart, some reason for the cut end not closing from its natural flaccidity, and a deep, gasping respiration to exercise suction. For this latter reason this accident was more common before the days of anæsthesia.

In the case under consideration all the elements neces-

sary to the occurrence of this accident are present. But one-quarter of an inch of the cord was left attached to the body, unligatured. The violent, spasmodic movements of the abdomen during strangulation would open the umbilical vein intermittently at least. In through this vessel, but a moment before, the whole of the infant's blood had been coursing ; a distance of about two and one-half inches would reach the vena cava, from which the course is broad and direct to the heart. The suction power exerted was the greatest possible. The return of blood from the head—disproportionately large in the infant—was entirely cut off from the heart. The heart was beating wildly, with the tenacity to life belonging to the new-born. This, vis-a-fronte, would tend to draw in air through the open channel to supply the place of the blood imprisoned in the head, and lost by the umbilical arteries. Still more powerful would be the suction force exerted by the respiratory efforts. With the trachea compressed by the strangulation at the neck, none, or very little air enters the lungs. This sense, of want of air causes these efforts to become more severe. It is easy to understand, that air will rush into such a vacuum, if there be any avenue.

The explanation of these air bubbles being found in both sides of the heart easily suggests itself. By the foramen ovale, as yet partially open, the entering current from the ascending vena cava would still enter the left auricle and so the left ventricle. The descending current of blood being almost entirely shut off, the

irregular action of the heart would naturally force the blood into either side of the heart.

On removing the liver, the large blood vessels were cut off just below the diaphragm. From these frothy blood escaped. It is impossible now to say whether this was from the aorta or vena cava.

If further research or observation in cases where no suspicion of putrefactive origin be possible, shall show that air is drawn into the heart in cases similar to the one related, we may see that this sign will be an important one.

By a strange freak of the law, the killing of a *fœtus in utero* is criminal, and the killing of an infant fully born is murder, while the destruction of a child during delivery is not a legal offence. The evidences of complete live birth are remarkably few and unsatisfactory. If, upon *post-mortem* examination, this sign should be found, it will be positive proof that death had not occurred until after birth was complete. Nor could it have been produced until the cord—the last bond to the mother—had been severed.

*THE PROGNOSIS OF PELVIC CELLULITIS.**

BY W. THORNTON PARKER, M.D. (Munich).
Medical Examiner Third District, Newport, R. I.

K. McW., a servant in the family of a wealthy summer resident at Newport, was ordered by her employer to go to the stable and open the sliding door, so that the coachman could drive into the barn. This occurred on the afternoon of October 11, 1886. In her endeavor to obey this order, the heavy door would not slide, but fell on the girl, crushing her down. The girl was assisted to her feet and returned to the house. She pluckily endeavored to do her work, and said, as she then thought, that she did not consider herself seriously hurt. The morning after the accident she spat blood, and complained of pain in her side. There was considerable physical disturbance ; menses increased, with tenderness in left side and in spinal dorsal lumbar region. Tuesday night she had a smart vaginal hemorrhage. Quantity of water (urine) increased. For two days following, symptoms of prolapse were complained of. An attempt to make vaginal examination reveals an almost imperforate hymen. The examination was concluded with great difficulty, owing to pain. Pelvic cellulitis was diagnosed.

The general condition of the patient continued to be

* Read at the January meeting of the Medico-Legal Society of Rhode Island, and before the Medico-Legal Society of New York.

very unsatisfactory. She was confined to her bed under treatment for a week or ten days, after which she seemed to be gaining slowly. On the 30th of October she went on to New York City, to be with her relatives for the winter. The journey was a severe one for her, and she lost ground by the pain and weariness of travel.

May 7th she returned again to Newport. Pelvic cellulitis still present, and a large swelling in the left inguinal region is still evident—there is great tenderness, general feebleness and depression of spirits. As already stated, upon vaginal examination, the girl was found to be a virgin, the hymen being present and unruptured. Vaginal examination is still very painful, and causes symptoms of fainting. The local and constitutional treatment is still continued, but anodynes are less frequently employed. The fact of her being a respectable and virtuous woman is proved quite clearly by the presence of a well-defined hymen ; but if this be denied on account of one or two cases where the membrane has been said to have been found in prostitutes, we can certainly assume that, generally speaking, the hymen is proof of virginity, if we can claim to have any medico-legal proof whatever.

The strength and general intactness of the hymen satisfied me, however, that no speculum had been introduced, and that the pelvic cellulitis was not due to severe and unreasonable treatment by some medical attendant. I have had under my care a young woman who suffered

for weeks with pelvic cellulitis, after rough and so-called heroic treatment of a female physician, but in this case no medical man had attended the girl for some years, if I have been correctly informed; for up to the time of the accident she was strong and healthy, and of cheerful spirit, willing to make herself useful and to earn her wages by honest toil.

All of our medical authorities agree as to the dangerous character of pelvic cellulitis and the permanence of the injuries usually induced, and the possibility of a rapidly fatal termination in a large number of cases.

In this case we must decide that pelvic cellulitis could have no other cause than the external injury which the poor woman received, and for which she sought our relief.

Pelvic cellulitis follows:

1. Parturition (labor).
2. Abortion.
3. Accidents in labor, such as the use of instruments.

It is doubtful if the disease can at all originate without violence.

4. Strong vaginal injections can cause it, also syringing with cold water after coitus, to prevent conception.

5. Immoderate coitus, hard pessaries.

7. *Mechanical injuries from accidents.*

All except the last are ruled out of this case, because the woman was positively and without doubt a virgin, and no entrance had ever been made into the vagina by anything whatever until examined for this very injury.

The case, then, is one of pelvic cellulitis following *external* causes, inflicting internal injuries.

Pelvic cellulitis is an inflammation of the cellular tissue surrounding the uterus and other pelvic organs, and extending up between the folds of the peritoneum, which form the broad ligaments of the uterus—at least this is where pelvic cellulitis is most common. We have first a condition of congestion, the cellulitis gradually extending, but it was during the stage of formation that the poor woman *hoped* that she was all right. Gradually the injury asserted itself, until, worn out by her brave and patient efforts, she succumbed to the now established physical ailment, and sought professional relief.

From the moment the accident occurred until to-day, the development of the case has been complete and the diagnosis of the disorder verified by its course. We are striving in the treatment of such cases to avert the most serious results. The usual results of pelvic cellulitis are these :

Health impaired for at least many months. Convalescence, if at all possible, tedious and prolonged. Sterility almost certain. Adhesions interfering with the growth of the uterus. The reproductive organs seriously and probably permanently damaged by destruction of the ovaries. Septicæmia, thrombosis and pulmonary embolism liable to occur and to cause death. The patient, in point of fact, becomes a permanent invalid, and finally succumbs to some form of tuberculosis.

We must admit the severity and serious danger of this

accident. I have tried to explain the special features of this case. It may be claimed that there is no proof that the woman did not overestimate her injuries, when in point of fact the poor woman did not and cannot realize the full extent of the hurt she has received. First, we have positive proof that the woman sustained an injury. Certainly the evidence shows that she was in a *position* to have sustained all and every injury her counsel claimed for her. Certainly the burden of proof should rest with the defense. Secondly, we have proof that a serious internal injury developed shortly after the accident and in regular course ; and, thirdly, we have proof that the only chances by which this case could have developed from any other cause are wanting, because physicians have testified that the woman, when examined, was found to be a virgin, and that consequently these injuries did not arise from any examination, application or erroneous treatment, but only by what did actually occasion them, the accident.

Dr. H. R. Storer, whose great experience and admirable judgment is generally admitted by the medical profession of all lands, was early in attendance upon this case, and yet against his opinion, and that of the other medical attendant, and without any professional defense, the counsel for the defendant did succeed in obtaining a disagreement of the jury.

Now the medico-legal interest in this case is in the query whether I have rightly or wrongly assumed that pelvic cellulitis is the sequence of violence. Is it at all

likely, or is it even possible for pelvic cellulitis to develop idiopathically? I think the medical profession will sustain me in my position, and at least allow that medical literature does not afford cases where pelvic cellulitis has originated without some marked and noticeable exciting cause. The general history of the case is interesting, and I believe it is one which is not likely to be rare in medical annals.

Are we not justified in claiming for our patients pecuniary compensation for such injuries on the theory that they have been seriously, and even permanently injured? In this particular case we had a poor young woman penniless, struggling for what she deemed a legal right to compensation against one of Newport's wealthiest summer visitors—a gentleman of not only large means and considerable influence, but defended by one of the most learned and eloquent lawyers in New England. Considering the facts as stated to be correct, did the poor girl receive justice? I for one am sure that she did *not*.

At the second trial, the case was won by the plaintiff, with \$1,000.00 damages.

NEWPORT, R. I., June 20, '87.

TRANSACTIONS.

MEDICO-LEGAL SOCIETY, APRIL SESSION.

PRESIDENCY OF CLARK BELL, ESQ.

April meeting was held on the 11th day, at Buckingham Hotel. Minutes of March meeting were read and approved. In absence of Secretary and Assistant Secretary, M. Ellinger acted as Recording Secretary.

The following active members, proposed by Clark Bell, Esq., were, on recommendation of the Executive Committee, duly elected :

Arthur S. Wolff, M.D., Brownsville, Texas ; Dr. R. E. Young, Sup't. State Asylum, No. 3, Nevada, Mo. ; George B. Twitchell, M.D., Sup't., Keene, N. H. ; S. Preston Jones, M.D., Sup't. Stockton Sanitarium, Merchantville, N. J. ; Morris H. Stratton, Esq., Salem, N. J. ; J. B. Gaston, M.D., Montgomery, Ala. ; Dr. J. S. Dorsett, Sup't. State Asylum, Austin, Texas ; Henry Palmer, M. D., Surgeon-General , Janesville, Wis. ; Dr. Granville P. Conn, Concord, N. H., Sec'y State Board of Health ; John W. Ward, M.D., Sup't. N.J. State Asylum, Trenton, N. J. ; Hon. Gustave Cook, Houston, Texas, Judge Criminal Court ; F. H. Clarke, M.D., Sup't. Eastern Kentucky Lunatic Asylum, Lexington, Ky. ; Hon. Daniel Barnard, Attorney-General of N. H., Franklin, N. H. ; Cyrus K. Bartlett, M.D., Sup't. Minnesota Hos-

pital for Insane, St. Peter, Minn.; James D. Moncure, M.D., Eastern Lunatic Asylum, Williamsburgh, Va.; Dr. C. A. Rice, Sup't., etc., Meridian, Miss.; Dr. B. F. Eads, Marshall, Texas; Dr. A. N. Denton, Austin, Tex.; Drs. M. B. Sullivan, Jas. W. Bartlett, Paul A. Stackpole and Carl H. Horsch, of Dover, N. H.; Dr. R. Rutherford, State officer, Houston, Texas; Dr. Michael Campbell, Sup't. Eastern Hospital for Insane, Knoxville, Tenn.

The following active members, proposed by Dr. W. J. Lewis, of Hartford, were also duly elected :

Professor FRANK L. JAMES, editor *St. Louis Medical and Surgical Journal*, of St. Louis, Mo.

Dr. GEO. W. BROWN, of St. Louis, Mo.

Bradley W. Lee, Esq., of the St. Louis Bar, 417 Pine street, St. Louis; Dr. I. P. Kligen Smith, of Blairsville, Pa., proposed by Dr. E. P. Thwing; Dr. Henry B. Baker, Secretary State Board of Health, Lansing, Mich., proposed by Dr. W. G. Stevenson, were also elected active members.

Dr. L. TH. POMPE, Superintendent of the Asylum for Insane called "COUDEWATER," at ROSMALEN, Holland, was, on motion of Clark Bell, Esq., and on recommendation of the Executive Committee, duly elected a corresponding member. The following papers were read :

The Menopause in Relation to Insanity, by T. R. BUCKHAM, M.D., Flint, Mich.; *The Prognosis of Pelvic Cellulitis*, by W. THORNTON PARKER, M.D., Medical Examiner, Newport, R. I.; *The Medical Jurisprudence of Inebriety*, by MARY WEEKS BURNETT, M.D.

The paper by Dr. Burnett was discussed by M. Ellinger and others.

President Bell announced the death of our late member, Hon. W. A. DORSHEIMER, and made remarks as to his character, official position and life. Mr. Bell said he had known Mr. Dorsheimer for twenty years. He alluded to his position as Lieut.-Governor, as member of Congress, as United States District Attorney for this District, his literary tastes and his position latterly as editor of one of the leading daily newspapers, and the esteem in which he was held by a large circle of friends. A letter from his late law partner, Hon. David Dudley Field, was read expressing regret at not being able to be present, and extolling the character of the deceased. Remarks were made by Albert Bach, M. Ellinger and others.

Mr. Bell then announced the death of Hon. Charles Hughes of Sandy Hill, N. Y., our late active member, and paid a tribute to his memory, reading the resolutions adopted at the Washington County Bar, on the occasion of his death.

The death of CORNELIUS A. RUNKLE of the New York Bar was announced by the chair, who spoke feelingly of Mr. Runkle's character and merits, and to the general expression of regret that his death had occasioned among the Bar and the Press of the city. M. Ellinger and Mr. Bach also spoke.

Mr. Bell then announced the death of our late corresponding member, Dr. J. N. RAMÆR, Inspector of the Insane Asylums of Holland. Mr. Bell said Dr. Ramær

was the foremost of the alienists of Holland. Born in 1817, a graduate of the University of Groningen, a pupil of VANDER KOLK, he was, on the latter's recommendation, made superintendent of the Insane Asylum at Zutphen, in January, 1842, where he remained till 1863, when he was appointed superintendent of the asylum at Delft, where he remained till 1869, when he removed to the Hague, in medical practice, till his appointment, in 1872, as General Inspector of the Dutch Asylums by the government.

Dr. RAMÆR was largely influential in the amendments adopted in Holland in October, 1884, amending the lunacy laws of that country. He was the founder and ex-President of the Dutch Society of Psychological Medicine, and an honorary and corresponding member of various societies in Europe, beside our own.

Mr. Bell read a letter from Dr. L. TH. POMPE, accepting the honor of corresponding member of the Society, enclosing a portrait of Dr. RAMÆR, and donating a copy of his report on "Coudewater" to the Medico-Legal Society of New York.

The chair laid before the Society the form of the record of *post-mortem* examinations adopted by the Massachusetts Medico-Legal Society, and in force among the Medical Examiners of that State, which specifies the manner of conducting autopsies, and schedules the detailed report in writing to be made and signed by the physician, making the autopsy, and characterized it as the fullest and most complete that had hitherto received official endorsement in this country.

He felt, that in view of the careless manner of conducting autopsies in coroners' cases, that there was a public necessity for concerted action, and perhaps legislation on the subject.

1. Should autopsy be made in all such cases by law?
2. What should such an autopsy be, and what should it show? And should not some provision be made to have such *post-mortem* examinations so conducted and officially reported as to answer any question that might arise after the decomposition of the remains?

He suggested that the Massachusetts form, which, if he correctly understood the matter, was substantially that of VIRCHOW, and the subject, be referred to a select committee.

On motion, the recommendation was approved unanimously, and the chair directed to name a committee of five. The chair named as such committee, Dr. FRANK L. INGRAM, Dr. PETERSON, Prof. R. O. DOREMUS, Dr. MATTHEW D. FIELD and Dr. W. G. STEVENSON.

The Society then adjourned.

MORITZ ELLINGER,
Secretary *pro. tem.*

MAY SESSION, 1888.

PRESIDENCY OF CLARK BELL, ESQ.

May meeting, 9th May, 1888, was held at Buckingham Hotel.

The following gentlemen were, upon the recommendation of the Executive Committee, elected members :

Corresponding--Proposed by CLARK BELL, Esq.:

Dr. SEMAL, Medical Superintendent of the Insane Asylum at MONS, Belgium, and President of the Society of Mental Medicine, of Belgium.

Dr. RUYSCH, of the Hague, Holland, Inspector-General of the Insane Asylums of Holland.

Dr. PRIUS, Inspector-General, of the Prisons of Belgium.

ACTIVE MEMBERS.

Daniel L. Brinton, Esq., 227 St. Paul street, Baltimore, Md.; O. Wellington Archibald, M.D., Superintendent Insane Asylum, Jamestown, Dakota; Dr. W. C. McFarland, 54 W. 26th street, New York; Eugene Grissom, M.D., Sup't. Insane Asylum Raleigh, N. C.; W. W. MacFarlane, M.D., Sup't. Insane Asylum Agnew, Cal.; Dr. H. K. Pussey, Sup't. Kentucky State Asylum, Anchorage, Ky.; Dr. E. P. Sale, President State Board of Health, Aberdeen, Miss.; W. W. Godding, M. D., Sup't. Government Hospital for Insane, Washington, D. C., Dr. T. R. Chew, San Antonio, Texas; Dr. D. M. Clay, Shreveport, La.

Proposed by M. Ellinger, Esq.: Morris Goodhart, Esq., 45 William street; Sigismund Waterman, M.D., 131 East 59th street.

Proposed by N. S. Giberson, M.D.: Professor J. O. Hirschfelder, of Cooper Medical College, San Francisco, Cal.

Proposed by E. W. Chamberlain, Esq.: Dr. Thomas Cleland, 354 West 22d street.

Professor THWING, Chairman of Committee on Hypnotism, reported, that the committee, as organized, desired to be discharged from the further consideration of the subject, which, on motion, was ordered.

It was moved and carried that the President name a new committee on Hypnotism.

The Chair laid before the Society communications from Society of Mental Medicine of Belgium, embracing publications made in the Bulletin of that Society for 1888, No. 48.—

1. The Classification of Mental Diseases, adopted by the Society of Psychiatry, of St. Petersburg, Russia, through the International delegate, Professor Meirzejewski.

2. The action of a commission upon the same subject named by the *Société Phreniatrique Italienne*, in September, 1886, composed of Professor Verga, President ; Signor BIFFI, Vice-President of that Society ; Signor BONIFIGLI, Superintendent of Asylum at FERRANE ; FUNAIOLI PAOLA, Professor and Director of Asylum at SIENNE ; Signor MORSELLI, Professor University at TURIN ; Signor RAGGI, Director Asylum at VOGHERA, and Professor of the University at PADUA ; and Signor Tamburini, Director of Asylum at REGGIO-EMILIO, and Professor of the University at MODENA, Secretary.

3. The classification for the United States of America, adopted at the Congress of Alienists, held in Saratoga, in Sept., 1880, and transmitted by the international delegate, Clark Bell, Esq., to the Belgian Society, with an enumeration of the various societies and associations

represented at that Congress, a list of its officers, and a résumé of its transactions.

4. The report of Dr. RAMÆR, the international delegate from Holland, enclosing the basis of classification proposed by him, with his views upon the whole subject.

This report was received and ordered placed on file.

Professor THWING then read a paper on INEBRIETY, which was discussed by Dr. ISAAC LEWIS PEET, Mr. Albert Bach and others.*

Dr. Isaac Lewis Peet :—“I wish to say that Dr. Thwing’s argument seems to me a very strong one, that there are reasons in the life of the citizens of this country which make it of special importance that the view expressed by him receive attention. I am glad he has given this paper, in which I concur.”

Albert Bach :—“Mr. President, I cannot assent to the broad statement of Dr. Thwing, that total abstinence is necessary for all persons living in our city. I do not believe that his assertion in that direction is borne out by statistics. It is true, that owing to a sharp, active competition in mercantile and other pursuits, a large number of our citizens evidence a certain restlessness, impetuosity and nervous excitability in their movements, but to claim that therefore they should abstain from all use of stimulants of any kind, in my opinion, is going

*The paper by Dr. Thwing will be found in the book, on the Medical Jurisprudence of Inebriety, just published by the Medico-Legal Society of New York, unavoidably crowded out of our columns.

too far. I accept and advocate the doctrine of moderation for every one, irrespective of the atmosphere in which we live, but look upon the theory of total abstinence not only as impracticable, but unnecessary of universal application. The use of stimulants is often essential to build up an overstrained physical system. Dipsomaniacs are the exceptions among the masses of our community, and it is, I submit, absurd to argue that moderate indulgence leads, even in a majority of cases, to alcoholism. Inebriety has been considered, in most of the papers read before this Society, as a disease; when it is, I concede it should be medically treated as such, but the effect of constant, excessive use of stimulants is not to be generally predicated, of occasional use of the same. I consider the extremists on the subject of prohibition, fanatical in their desire for an indiscriminate application of their rule. Abstemiousness should be our banner word, not prohibition. Heredity has much to do with a love of liquor, and natural inclinations and disinclinations of individuals should be taken into consideration when discussing the propriety of prohibitory laws. The lateness of the hour prevents my saying more on this subject."

In the absence of the author, Mr. E. W. Chamberlain read a paper by DANIEL BRINTON, Esq., of the Baltimore Bar, entitled "Rape by Boys."

The Treasurer read a paper by W. THORNTON PARKER, Medical Examiner at Newport, R. I., on a "Case of Supposed Abortion."

The President then made a report in detail on the progress of the work of Nationalizing the Society.

PRESIDENT BELL.—After the action of the Society recognizing formally the recommendation of the President in his “Inaugural Address,” in regard to extending the lines of influence of this Society throughout the Union, this circular letter was prepared, to be sent to prominent men, throughout the Union and the Canadas, in both professions :

MEDICO-LEGAL SOCIETY, OFFICE OF THE PRESIDENT,
57 BROADWAY,
NEW YORK, February, 1888.

(Dictated.)

MY DEAR SIR :

It is proposed to nationalize the Medico-Legal Society by extending its membership into each State and Territory of the Union, where members do not now reside, and to elect at least ten names in each.

We have at present members in all the States except eight, and in all the Territories except four, and steps will at once be taken to address distinguished and representative men in those States and Territories.

We wish to be on more intimate relation with those men in each State who take an interest in Medical Jurisprudence, and we shall ask judges, and prominent men in both professions, in each of the States and Territories to unite, with a view of placing the Science in America upon a higher and more important basis, which, if successful, cannot fail to be of the greatest possible advantage, and add to the dignity and usefulness of both professions in America.

The plan proposed is—

First—To reduce our annual dues to members residing outside of the State of New York to \$2.00 per annum. Initiation fee, \$5.00.

Second—We shall send the JOURNAL free to active members, the subscription price of which alone is \$3.00 per annum.

Third—We now vote by mail (by ballot) at our annual elections, and the presence of members at meetings is not indispensable. The JOURNAL contains full accounts of our transactions and the papers read.

Fourth.—We propose to elect a Vice-President of the Society from each State and Territory, and to ask members from each to report all cases of

interest to the Editor, or the President of the Society, with a view of bringing the study of the science and of all questions arising within this country, at once to the attention of the Society. This plan has met the approval of distinguished men in various sections of the Union. Judge Somerville of the Supreme Court of Alabama, and Dr. P. Bryce, Superintendent of the State Lunatic Asylum at Tuscaloosa, will lead the movement in that State, and have consented to favor it actively in the Southeastern States.

Governor Robert S. Green and Judge C. G. Garrison, of New Jersey, will lead in that State. Dr. Joseph Jones in Louisiana; Professor J. J. Elwell, Rev. William Tucker, of Mt. Gilead, C. H. Blackburn of Cincinnati, in Ohio; Dr. McClelland, of Knoxville; Dr. Horace Wardner, Superintendent at Anna, Dr. E. J. Kilbourne, Superintendent at Elgin, Dr. D. W. Aldrich, Mayor of Galesburgh, and some friends in Chicago, will lead in Illinois; Dr. J. Draper, Superintendent of State Asylum at Brattleboro, in Vermont; Dr. Thomas O. Powell, of State Asylum, Milledgeville, in Georgia; Dr. D. W. Yandell in Kentucky; S. Hepburn, Jr., of Carlisle, Pennsylvania; ex-Governor Hoyt, of Philadelphia, Dr. George B. Miller, Dr. Alice Bennett, Mrs. M. Louise Thomas, in Pennsylvania; Dr. W. B. Fletcher, Dr. O. H. Kellogg, in Indiana; Dr. Jennie McCowen, of Davenport, Dr. Gershom B. Hill, Dr. F. E. Crittendon, in Iowa; William M. Taylor, Vice-President of the Connecticut Mutual Life Insurance Company, and Dr. Gieb, of Stamford, Dr. J. S. Butler and Dr. W. B. Lewis, of Hartford, will lead in Connecticut; Judge J. C. Normile, of the Criminal Court in St. Louis, and Dr. R. E. Young, Sup't of the State Asylum, at Nevada, will lead in Missouri, aided by distinguished members of both professions; Dr. Middleton Michel, of Charleston, S. C., in that State; Dr. T. R. Buckham and Professor V. C. Vaughan, in Michigan; Dr. Ira Russell, Dr. Ed. J. Cowles, Dr. Frank K. Paddock, in Massachusetts, while prominent gentlemen in various other States have consented to aid the movement.

I send herewith current number of the *MEDICO-LEGAL JOURNAL*, or copy transactions, which contains a list of our active and corresponding members at the end of last year. As this movement will be addressed largely to the judiciary and upon the legal side, it may be proper to mention the following judges and ex-judges in this State who are now members of this body:

Ex-Chief Justice Noah Davis, Judge Miles Beach, of the Supreme Court, ex-Judge Richard W. Busted, ex-Surrogate D. C. Calvin, ex-Judge John R. Dillon, ex-Judge A. J. Dittenhoefer, ex-Judge Charles Donohue, District Attorney John R. Fellows, ex-Judge S. Burdett Hyatt, ex-Judge M. S. Isaacs, Judge George L. Ingraham, ex-Judge J. P. Joachimson, ex-Judge J. H. McCarthy, Chief-Justice David McAdam, ex-Judge Marcus Otterberg, Judge Calvin E. Pratt, Chief-Justice Sedgwick and ex-Judge G. M. Speir.

Your name has been handed me by with a request that I write to you and ask you to lend your name to the movement in your State.

If this meets your approval, sign enclosed consent and I will propose your name for membership.

I will thank you to send me the names and addresses of such leading men of both professions, in your State and the States adjoining your own, as you think will be likely to unite with this body in the proposed movement.

I remain, sir, with great respect,

Very respectfully yours,

CLARK BELL.

That letter has been sent to about five hundred gentlemen, asking them to send them to persons interested in the subject in their States. Some members of the Society also have been furnished with a few copies of the circular, which they have sent to friends. Enclosed in this letter has been sent a copy of the committees which were named in the various States, additions to which have been made to-night, where they did not exist at the time this circular was prepared. The responses which have been made to this proposition have been, to my mind, something extraordinary. These circulars have been sent to men most prominent in the various States, men occupying prominent positions in each profession, and I have to announce to you that commencing with the January meeting, which is hardly within the scope of the movement, up to the present meeting, one hundred and fourteen active members, and seven corresponding members, have united with this body, making in all one hundred and twenty-one new members.

The medical members will be surprised and pleased to know how splendidly this movement has been aided by the medical superintendents of insane asylums.

I have not written them all, because it requires, besides the circular, an additional letter, and the pressure of my private business has been so great that I have not had the time to devote to it. I wish I had. But we have elected twenty-seven superintendents of asylums, since the January meeting, to this body. I enclose a list of these gentlemen, who are the leading representative alienists of the Union, with some of the leading officials who have united :

Superintendents of Asylums.

T. Bryce, Tuscaloosa, Ala.
 Emmett C. Dent, Blackwell's Island,
 New York.
 Ed. E. Whitehorne, Batavia, Ill.
 Thos. O. Powell, M.D., Milledgeville,
 Georgia.
 Dr. J. Draper, Brattleboro, Vt.
 Dr. E. J. Kilbourne, Elgin, Ill.
 Dr. H. Wardner, Anna, Ill.
 Dr. R. E. Young, Nevada, Mo.
 Dr. Fred. Peterson, Asst. Physician.
 Dr. D. R. Wallace, Terrell, Texas.
 Dr. E. R. Burrell, Canandaigua, N. Y.
 Dr. S. B. Buckmaster, Mendota, Wis.
 Dr. G. B. Twitchell, Keene, N. H.
 Dr. S. Preston Jones, Merchantville,
 New Jersey.
 Dr. J. S. Dorsett, Austin, Texas.
 Dr. J. M. Ward, Trenton, N. J.
 Dr. F. H. Clarke, Lexington, Ky.
 Dr. C. K. Bartlett, St. Peter, Minn.
 Dr. J. D. Moncure, Williamsburgh,
 Virginia.

Judges, District Attorneys and Officials.

Judge H. M. Somerville, Mont-
 gomery, Alabama.
 Ex-Governor Hoyt of Pennsylvania.
 Prof. Vaughan, of Ann Arbor, Mich.
 Judge M. B. Montgomery, Wash-
 ington, D. C.
 Dr. D. W. Aldrich, Mayor Gales-
 burgh, Ill.
 Hon. Henry Robinson, Concord,
 New Hampshire.
 Judge Normile, St. Louis, Mo.
 Judge Erlich, New York.
 Hon. H. C. Tompkins, Alabama.
 Dr. Arthur S. Wolff, Texas.
 Dr. H. Palmer, Surgeon-General,
 Wisconsin.
 Dr. Henry B. Baker, Secretary
 State Board of Health, Michigan.
 Judge Gustave Cook, Texas.
 Hon. Daniel Barnard, Attorney-
 General of New Hampshire.
 Dr. R. Rutherford, Health Officer,
 Texas.

Superintendents of Asylums.	Judges, District Attorneys and Officials.
Dr. C. A. Rice, Meridian, Miss.	Prof. Frank' L. James, St. Louis
Dr. Michael Campbell, Knoxville, Tennessee.	<i>Medical Journal.</i>
O. Wellington Archibald, Jamestown, Dakota.	Daniel L. Brinton, Esq., Baltimore Bar.
Dr. E. Grissom, Raleigh, N C.	Dr. E. P. Sale, President Mississippi State Board of Health.
Dr. W. W. Godding, Washington, D. C.	Prof. J. O. Hirschfelder, of California.
Dr. H. K. Pusey, Kentucky.	Prof. C. H. Boardman, State University of Minnesota.
Dr. W. W. MacFarlane, California.	Frank H. Howard, Esq., Los Angeles, California.
Twenty-six in number.	
John M. Taylor, Vice-President of Connecticut Mutual Life Ins. Co.	
Governor R. S. Green, New Jersey.	

This is a most cheering and gratifying result. You can hardly measure or estimate, the extended influence this is to bring to the usefulness of this Society throughout the United States, and indeed North America. I hold in my hand many letters from gentlemen throughout the States, who express the warmest sympathy.

We have elected twelve from New Hampshire, eight from Texas, twenty-three from New York, four each from Pennsylvania, Wisconsin, Georgia and Michigan, eight from Missouri, nine from New Jersey, five each from Alabama and Illinois, three each from Connecticut, Kansas, Kentucky, Louisiana, Mississippi, Massachusetts, Minnesota and Virginia, with several additions from other States, so that West Virginia, Maine, Delaware and Arkansas are the only States in which we have not members at this moment.

It has occurred to me, that this would be the most gratifying announcement I could possibly make to the Society. To my mind, this is one of the most extraordinary

statements that any official of this Society has ever been called upon to make. We have, as you are aware, called an International Congress of Medical Jurisprudence, and have issued circulars to the scientific world, and fixed the time for the Congress to commence on the first Tuesday in June, 1889, and decided that it be held for four days.

I have already received many letters from men who desire to be present. Men from all parts of the world will be invited. Those who come will be entertained by members of the Society at their homes, and at that Congress members of the Society residing outside New York City will find it a good time to visit us. A preliminary sub-committee of arrangements has been appointed; the full committee of arrangements will be made later on, when it becomes necessary to take hold of the work. Dr. Charles H. Hughes, the talented editor of the *Alienist and Neurologist*, has notified me that he will read a paper. W. W. Godding, Superintendent of Government Asylum of the Insane at Washington, announced that he would also read a paper on that occasion.

I desire to allow the Society to be aware of the steps taken. I have no doubt that we shall increase the membership very largely by the early autumn. There is only one more meeting of the Society before the summer vacation. I have no doubt that these figures which have been given will be more than doubled, and that the usefulness and interest in this body, and its lines of influence, will be extended far beyond anything we have ever hoped or expected."

The resignation of Clark B. Augustine as Assistant Secretary, being presented, who was unable to give the necessary time to the discharge of the duties of that office, it was, on motion, accepted. By unanimous consent the by-law was suspended requiring one month's previous notice of nomination of candidates, and the Society, on motion, proceeded to elect an Assistant Secretary. Dr. FRANK H. INGRAM, having received the unanimous vote of the Society, was declared elected.

On recommendation of the Executive Committee, the date of the International Congress was fixed for the first Tuesday in June, 1889, to continue four days, in the City of New York.

The Secretary laid before the Society a contract dated May 8, 1888, between the MEDICO-LEGAL JOURNAL Association and this Society, by which this body subscribed for the MEDICO-LEGAL JOURNAL, Vols. 6 and 7, for all its members, and for one hundred copies for its exchanges, which had been executed by the Presidents and Secretaries of both bodies ; which was read and ordered filed.

On motion, the contract was duly approved in form, and the action of President and Secretary in signing the same duly approved.

The paper of Dr. W. Thornton Parker was discussed and criticised by Dr. Peterson, who said : " It seems to me that the method of post-mortem examinations has been made too cursory, because any medical examiner who is called to investigate a suspected criminal case, should examine the organs of the chest and head.

I think, where a person is found dead, a thorough examination should be made in all medico-legal cases."

Mr. Edward Chamberlain :—" I would like to ask the gentleman if he suggests the examination of the chest and head, as bearing upon this possible crime of infanticide or abortion in any way, or merely as a matter of ordinary precaution, with no relation to this paper. If so, is it possible that this examination may be omitted by the author of this paper, who did not consider it necessary.

Dr. Patterson :—" The writer of the paper was called in to ascertain the reason of death. He examined the body as it is done in other medico-legal cases in this country, but he ought to have examined the os, as well as the stomach."

Dr. Matthew Field :—" I would say just one thing, which is important to ascertain, whether the woman was married before? He does not make any statement dealing on this subject."

President Bell :—" The Chair has had no correspondence with Dr. Parker, and the only knowledge he has on the subject is the paper contributed."

The Chair announced the addition of the following names on the Committee on Nationalization, viz.:

Dr. D. M. CLAY, of Shreveport, La., in place of Dr. Joseph Jones, whose state of health forbids his serving. Hon. Daniel Barnard, Attorney-General of New Hampshire, in place of Dr. C. P. Frost, resigned. Dr. C. A. RICE, Sup't. of the State Asylum at Meriden, for Mississippi.

Dr. Michael Campbell Supt. State Asylum, of Knoxville, for the State of Tennessee. Dr. D. R. Wallace, Sup't. State Asylum of Terrell, for Texas. Dr. W. W. Godding, Sup't. Government Hospital for Insane, at Washington, for District of Columbia, and Dr. O. Wellington Archibald, Sup't. Insane Asylum at Jamestown, for Dakota Territory.

The Chair stated that he would hereafter announce the Committee on Hypnotism.

The Society then adjourned.

ALBERT BACH, Secretary.

MASSACHUSETTS MEDICO-LEGAL SOCIETY.

ROOMS OF THE BOSTON MEDICAL LIBRARY ASSOCIATION.

June 12, 1888.

The eleventh annual meeting was called to order at 12:15 P. M., by President Winsor.

Present, sixteen members.

Reading of the record of last meeting was postponed.

The Treasurer made his report, showing a balance of \$26.85 in the treasury at date.

The report was adopted, and an assessment of three dollars was declared.

The President appointed a Committee of three to nominate a list of officers for the ensuing year.

The Committee reported the following list, which was unanimously adopted :

President—Medical Examiner J. G. Pinkham, Lynn.

Vice-President—Medical Examiner A. F. Holt, Cambridge.

Corresponding Secretary—Medical Examiner B. H. Hartwell, Ayer.

Treasurer—Medical Examiner C. C. Tower, South Weymouth.

Recording Secretary—Medical Examiner W. H. Taylor, New Bedford.

President Pinkham thanked the Society for the honor conferred on him, and made a few remarks concerning the best ways of forwarding the Society's interests.

The President appointed the following gentlemen Standing Committee for the ensuing year: Medical Examiners, Draper, Presbrey and Winsor.

Voted, On motion of Medical Examiner Draper, to empower the Standing Committee to bind the Transactions of the Society in a suitable manner.

Medical Examiner Holt deplored the inactivity of members in the matter of presenting papers, and hoped that members will feel it their duty to the Society to make efforts to increase the interest of the meetings.

Voted, On motion of Medical Examiner Winsor, that the subject for discussion at the October meeting be "Poisoning by Arsenic," and that members be notified of this vote as early as convenient.

Medical Examiner Winsor made some remarks regarding his term of office as President, and read an interesting account of a Disputed Case of Accidental Drowning. The death was due to an epileptic attack

while bathing. Certain questions of violence arose in the minds of the public, and an autopsy was made by private parties, without definite result as to cause of death. A prominent question in Dr. Winsor's mind was, whether he should have made an autopsy to satisfy public sentiment, believing, as he did, that the case was purely one of accidental drowning.

In the discussion which ensued, Medical Examiner Morse reported a case of an epileptic who met his death by drowning while in an attack.

Medical Examiner Holmes reported a case of drowning in a tub, the subject being a child of twenty-one months, and the water but one and three-quarter inches deep.

Medical Examiner Presbrey reported a case of drowning in a little rill of water from melting snow, the locality being dry when the body was found.

Medical Examiner Taylor reported a case of drowning in a little water contained in the imprint of a horse's hoof in mud, which subsequently became frozen.

Medical Examiner Wright reported a case of a man who vomited the contents of his stomach, and, lying face downward, was literally drowned in the fluid.

Medical Examiner Holt believed that the office of Medical Examiner was created in the interest of the public and not that of the official, and he would make an autopsy in any case where public sentiment demanded it.

Medical Examiner Paine reported a case of drowning showing the necessity of an autopsy.

The subject was further discussed by members Holmes and Morse.

Voted to adjourn.

W. H. TAYLOR,
Recording Secretary.

EDITORIAL.

DEFINITIONS OF INSANITY AND TESTS OF LEGAL RESPONSIBILITY OF THE INSANE :

BURTON :—

“Madness is therefore defined to be a vehement dotage, or raving without a fever, far more violent than melancholy, full of anger and clamor, horrible looks, actions, gestures, troubling the patients with far greater vehemency, both of body and mind, without all fear and sorrow, with such impetuous force and boldness, that sometimes three or four men cannot hold them.

“Differing only in this from phrensy, that it is without a fever, and their memory is in most part better. It hath the same causes as the other, as choler adust and blood incensed, brains inflamed, etc.”

(Burton's Anatomy of Melancholy, p. 91.)

PHRENSY :

“*Phrenitis*, which the Greeks derive from the word *φρην*, is a disease of the mind, with a continual madness or dotage, which hath an acute fever annexed, or else an inflammation of the brain, or the membranes, or kels of it, with an acute fever, which causes madness and dotage.

“It differs from melancholy and madness, because their dotage is without an ague; this continued with waking or memory decayed, etc. Melancholy is most part silent, this clamorous, and many such like differences are assigned by physicians.”

(Ibid.)

“Madness, phrensy and melancholy are confounded by CELSUS and many writers, others leave out phrensy and make madness and melancholy but one disease, which JASON PRATEUSIS especially labors, and that they differ only *secundum magis* or *minus* in quantity alone, the one being a degree to the other and both proceeding from one cause. They differ *intenso et remisso gradu*, saith GORDONIUS, as the humor is intended or remitted.

“Of the same mind is ARETUS ALEXANDER TERTULLIANUS, GUIANERIUS, SAVARCASOLA, HEUMIUS, and GALEN himself writes promiscuously of them both, by reason of their affinity, but most of our Neoterics do handle them apart, whom I will follow in this treatise.”

(Ibid.)

FRACASTORIUS :—

Adds to the definition of Burton “a due time and full age to distinguish it from children, and will have it confirmed impotency, to separate it from such as accidentally come and go again, as by taking henbane, nightshade, wine, etc.

“Insams est qui aetate debita, et tempore debite per se nom momentaneam et fugacem, ut vini, solani. Hyosciami sed confirmatam habet impotentiam, bene operandi circa intellectum.”

(Lib. 2 de Intellictione.)

(Burton's Anatomy of Melancholy.)

ENGLISH SYMPATHY WITH PHYSICIANS.

DRS. MARSHALL and SHAW, of CLIFTON, were sued for damages by a lady whom they certified to be insane. They succeeded in the action, but the impecunious plaintiff was irresponsible for costs.

The *British Medical Journal* of the 14th of April, 1888, publishes the subscription list of sympathizers who contribute over £160 to them to defray the legal and other expenses.

PHENOMENA OF DROWNING.

DR. PAUL LOYE, at the CONGRESS FOR THE ADVANCEMENT OF SCIENCE, held lately at OSAM (Algeria), contributed the following, as the results of his observation, regarding death by drowning :

“The first stage of deep inspirations lasts about ten seconds, followed by a reaction caused by the resistance to the entrance of water into the bronchioles—this lasts for a minute, and is succeeded by arrest of respiration, and loss of consciousness—finally the scene closes with four or five respiratory efforts—the last.” Immersion causes

an immediate rise in the blood pressure, with slowing of the heart-beats.

The action of the heart remains slow but strong, till death ensues. The pressure gradually lessens, but rises just before death, to fall to zero immediately afterward. The heart sometimes continues to beat feebly, for about twenty minutes.

The result is the same in animals which have been tracheotomized. The period of respiratory resistance is therefore due to the respiratory muscles, and not to spasm of the glottis.

(British Med. Journal.)

CHAIR OF MEDICAL JURISPRUDENCE IN DUBLIN.

Mr. ROBERT TRAVIS, who has had this chair in Trinity College, Dublin, and who lectured on Medical Jurisprudence in the Ledwich School of Medicine, died on March 27, 1888. He has been Professor since 1864.

Dr. A. BEWLEY has been elected lecturer on Medical Jurisprudence at Trinity for the present session, and Dr. C. H. ROBINSON has been appointed lecturer on Medical Jurisprudence in the Ledwich School of Medicine.

PERSONAL.

Dr. DROINEAU has been appointed Inspector-General of the French Charitable Institutions, in place of Dr. ACH FOVILLE, deceased.

Dr. RUYSCH has been nominated to the position of

Inspector-General of the Insane Asylums of Holland, to fill the vacancy occasioned by the death of Dr. RAMÆR.

ELECTRICITY VS. THE HANGMAN.

New York says:

“ *Adieu* to the hangman and the gallows,
The scaffold and the rope.”

Science removes from our civilization the ghastly struggles of the condemned, with the executioner, and the revolting scene of men strangled by bungling in adjusting the-rope.

Despite the clamor of the voices that saw beauties in hanging men for crime, the labors of the Medico-Legal Society, after years of debate, are crowned with success. The Governor has signed the bill to which he called attention in his message.

The lesson taught is, that needed legislative reforms, against evils, long existing, come best through properly selected commissions.

THE NEW YORK PRESS AND MEDICAL JURISPRUDENCE.

The New York *Herald* has lent the great weight, of its influence as a journal, to a notice of the work of the Medico-Legal Society of New York. In its issue of 26th June there appeared a résumé of its work, which will arrest the attention of both professions, throughout the world.

We give it space in this JOURNAL.

" MEDICINE AND THE LAW.

ORGANIZING AN INTERNATIONAL CONGRESS AND A NATIONAL SOCIETY.

CLOSER COMBINATION DESIRED.

Progress in Biology, Neurology, Psychiatry, Physiology, Psychology
and Toxicology.

The Medico-Legal Society, of this city, is apparently awakening to a state of considerable activity, and the effect of its exertions is being felt throughout the country and in Europe.

It has been decided to undertake two important steps. In the first place, efforts are being made to gather together in this country in June, 1889, an international congress of medical jurisprudence, to which representatives of all countries have been invited to attend, or at least contribute papers on the subjects to be discussed.

In the second place, an apparently successful attempt is being made to nationalize the Medico-Legal Society, by extending its membership into each State and Territory of the Union where members do not now reside, and to elect at least ten representatives in each section.

THE COMING CONGRESS.

Regarding the proposed international congress, a circular letter was recently sent by the Medico-Legal Society, to all kindred societies in Europe and to a large number of prominent lawyers and physicians throughout America. This circular set forth the fact, that the progress made in this century, in the sciences of biology, neurology, psychiatry, physiology, psychology and toxicology, have enhanced our knowledge of the functions of brain and nervous organization, and have elevated medico-legal science to a higher rank than it ever occupied before.

The conviction, it is said, has therefore gained ground, that medicine and jurisprudence must combine closer for a clearer definition and the better understanding of the principles that are rooted in both branches of learning, in the exercise of functions which require practical application in the government of society. This is claimed to be the special field of medico-legal science, and calls for the most intimate relationship between the faculties of medicine and of the law.

In most of the European countries, say the advocates of medical jurisprudence, forensic medicine is taught by great specialists, attached to the universities, and the same is done in some of our own colleges, though there is no uniform practice, in the application of these principles to the adminis-

tration of justice. The courts in Germany obtain the opinions of experts-officially attached to those institutions, but they are often disregarded, and neither in this country, or in Europe, are the courts bound by the professional opinions of the medical expert.

ACTIVELY ORGANIZING.

As to the efforts being made by the Medico-Legal Society, to nationalize its organization, it is stated that the society has members in all the States except eight, and in all the Territories except four, and steps are being taken to enter into communication with representative men, who take an interest in medical jurisprudence, in the unrepresented States and Territories. As the Society votes by mail (by ballot) at the annual elections, the presence of non-resident members at the meetings is not considered indispensable.

According to the plan adopted, it is proposed to elect a Vice-President of the Society, from each State and Territory, and to ask members from each, to report all cases of interest to the President of the Society, with a view of bringing the study of the science, and of all questions arising from it, within this country, at once to the attention of the Society. This plan is said to have met with the approval of distinguished men, in various sections of the Union.

Judge Somerville, of the Supreme Court of Alabama, and Dr. P. Bryce, Superintendent of the State Lunatic Asylum at Tuscaloosa, will lead the movement in that State, and will favor it actively in the Southeastern States.

Governor Robert S. Green and Judge C. G. Garrison, of New Jersey, are announced to be willing to lead in that State. Dr. Joseph Jones will do the same in Louisiana. Professor J. J. Elwell, Rev. William Tucker, of Mt. Gilead; C. H. Blackburn, of Cincinnati, lead in Ohio; Dr. McClelland, of Knoxville; Dr. Horace Wardner, Superintendent at Anna; Dr. E. J. Kilbourne, Superintendent at Elgin; Dr. D. W. Aldrich, Mayor of Galesburgh, and some friends in Chicago, lead in Illinois. Dr. J. Draper, Superintendent of the State Asylum at Brattleboro', Vt.; Dr. Thomas O. Powell, of the State Asylum, Milledgeville, Ga.; and Dr. D. W. Yandell, in Kentucky.

In Pennsylvania the Society is represented by S. Hepburn, Jr., of Carlisle, ex-Governor Hoyt, Dr. George B. Miller, Dr. Alice Bennett and Mrs. M. Louise Thomas, of Philadelphia. Dr. W. B. Fletcher and Dr. O. H. Kellogg hold up the flag in Indiana. Dr. Jennie McCowen, of Davenport, Dr. Gershom B. Hill and Dr. F. E. Crittenden do the same in Iowa. William M. Taylor, Vice-President of the Connecticut Mutual Life Insurance Company, and Dr. Geib, of Stamford; Dr. J. S. Butler and Dr. W. B. Lewis, of Hartford, will lead in Connecticut. Judge J. C. Normile, of the Criminal Court, heads the list in St. Louis, and will lead in that State,

aided by distinguished members of both professions. Dr. Middleton Michel, of Charleston, S. C., is foremost in that State; Dr. T. R. Buckingham and Dr. V. C. Vaughan lead in Michigan; Dr. Ira Russell, Dr. Ed. J. Cowles and Dr. Frank K. Paddock are in the front rank in Massachusetts, while prominent gentlemen in various other States have consented to aid the movement.

NEW YORKERS INTERESTED.

The following judges and ex-judges in this State are members of the Medico-Legal Society:—Ex-Chief Justice Noah Davis, Judge Miles Beach, of the Supreme Court; ex-Judge Richard W. Busteed, Ex-Surrogate D. C. Calvin, ex-Judge John F. Dillon, ex-Judge A. J. Dittenhoffer, ex-Judge Charles Donohue, District Attorney John R. Fellows, ex-Judge S. Burdett Hyatt, ex-Judge M. S. Isaacs, Judge George L. Ingraham, ex-Judge J. P. Joachimssn, ex-Judge J. H. McCarthy, Chief-Justice David McAdam, ex-Judge Marcus Otterburg, Judge Calvin E. Pratt, Chief-Justice Sedgwick and ex-Judge G. M. Speir.

According to the statistics furnished by Clark Bell, President of the Medico-Legal Society, the movement for nationalization has been successful in several States, and over one hundred members have recently united, with that body, some twenty-five of whom are superintendents of insane asylums outside of New York,

Much increase of interest seems to be taken in medico-legal science. The Medical Jurisprudence Society, of Philadelphia, is in a flourishing condition, 'Live Birth in Medico-Legal Relations,' 'Will Contests,' 'The Handwriting of the Insane,' 'The Claim of Moral Insanity,' 'A Strange Homicide Case,' 'Criminal Psychology' and 'Suicide in Its Relations to Insanity,' being some of the interesting papers recently read before that body.

The Massachusetts Medico-Legal Society is also doing good work, being organized under the action of the Medical Examiners of that State, who take the place of the coroners, who have been abolished, in that section of the country.

In France, the position of forensic medicine is considered to be in a satisfying condition, and the labors of the Medico-Legal Society of France have borne good fruit. But, strange as it may seem, Italy has led, in the race for knowledge in this direction, and the Italian journals are considered to be in the front rank of the world, in the various departments of neurology, psychiatry, forensic and State medicine.

IN OTHER COUNTRIES.

Forensic medicine receives careful attention in the German universities, and there is a chair of forensic medicine in each. Belgium has no Medico-

Legal Society, the students of the science being chiefly medical men. The leading Belgian society is the Society of Mental Medicine, which includes the leading alienists of Belgium. Holland is in a similar condition, the Netherland Society of Psychiatry at present being the foremost society in Holland, so far as mental medicine is concerned.

Russia's leading society is the Society of Psychiatry, of St. Petersburg, but that country has no Medico-Legal Society. In the Scandinavian countries, Professor Alexander Key, of Copenhagen, Denmark, is the leading advocate of forensic medicine. There is as yet no national or local society of medical jurisprudence in Great Britain, but the English and Scotch alienists and neurologists keep abreast with the advance of science in other countries.

Some time since, the Medico-Legal Society of New York announced that the following prizes for original essays, on any subject within the domain of medical jurisprudence or forensic medicine, would be awarded for the first time this year, the papers to be sent to the President of the Medico-Legal Society of New York, no later than June 1st, 1888 :

1. For the best essay, \$100, to be known as the 'Elliott F. Shepard prize.'
2. For the second best essay, \$75.
3. For the third best essay, \$50.

Though the time was originally limited to April 1st, it is understood that any essays arriving up to June 1st, will be considered and receive due recognition. It was intended to make these prizes open to all students of forensic medicine, throughout the world.

A sample of the work covered by the Medico-Legal Society may be judged from the following questions recently sent to gentlemen who were competent to answer them, by the President, Mr. CLARK BELL :—

'Please give me your idea of the best definition of insanity under our present knowledge of that subject?'

'Also what in your judgment should be the legal test of criminal responsibility for acts committed by persons suffering from any form of mental disease?'

'In conclusion it may be stated, that there was no section of medical jurisprudence, at the late International Medical Congress at Washington, and many people complain of the fact, that the science is almost wholly neglected in the American Bar Association.'

When a great journal like the New York *Herald* pays this tribute to a scientific society in America, and gives such a recognition to the character and value of its labor,

it is entitled to the thanks of every officer and member of the body.

THE NEW YORK TRIBUNE.

This influential journal, which has ever been alive to the advance of scientific thought, notices with approval the labor attempted by the Society.

The public are aware of the interest taken by the *Tribune* in the question of intemperance, and the relation of alcoholic liquors before the law, and it has made and published, from a great variety of sources, the opinions of competent judges, as to the effect of inebriety in the various States.

We give the substance of the *Tribune's* article, and take this occasion to thank the *Tribune* for the interest it has taken in the Society and its projected endeavor :

A NATIONAL MEDICO-LEGAL SOCIETY.

PUSHING THE WORK OF ORGANIZATION IN EVERY STATE AND TERRITORY.

The Medico-Legal Society, of which Clark Bell is president, will soon be organized in a more thorough manner, consolidating in this country its different branches under the name of the Medico-Legal Society. Already there are members in all but eight States and four Territories, more or less organized in a systematic manner, and it is proposed to further carry forward the work of organization, to acquire better facilities for the study and collection of facts regarding the sciences of biology, neurology, physiology, psychology and toxicology, by convening an international congress early next spring.

A circular has already been sent to the leading kindred societies in Europe, and to prominent professional men throughout America. It is also proposed to elect in each State and Territory a vice-president, through whom all facts, gathered in his district relating to the sciences named, shall

be forwarded to the central body in New York. A subject which is receiving great attention from the Society, is insanity from drunkenness, and a great many facts relative to that phase of the human mind and appetite have been carefully compiled and commented upon in a book which is now in proof, but will soon be published under the name of "The Medical Jurisprudence of Inebriety," by the Medico-Legal Society.

One of the papers recently read at a meeting of the Society, was the report of a committee on the best methods of executing criminals. Judge Noah Davis has submitted a long article to the Society on the disease of drunkenness, and its relation to the law. He says: "Whether drunkenness be or be not a disease, was not the point to be determined, but the point was then, as now, whether drunkenness, if it be a disease, is or is not to be treated like other diseases in the commission of crime. No disease excuses any man for the commission of crime."

Among the prominent men interested in the work of the Society, are Judge Somerville, of Alabama; Dr. P. Bryce, superintendent of the State Lunatic Asylum at Tuscaloosa; Governor Robert S. Green and Judge C. G. Garrison, of New Jersey; Dr. Joseph Jones, of Louisiana; Professor J. J. Elwell and the Rev. William Tucker, of Ohio; Dr. McClelland, of Tennessee; ex-Governor Hoyt, Dr. George B. Miller, and Dr. Alice Bennett, of Pennsylvania and Pliny Earle, of Massachusetts.

The following judges and ex-judges in this State are members of the Medico-Legal Society: Ex-Chief Justice Noah Davis, Judge Calvin E. Pratt, Judge Miles Beach, of the Supreme Court; ex-Judge Richard W. Busted, ex-Surrogate D. C. Calvin, ex-Judge John R. Dillon, ex-Judge A. J. Dittenhoefer, ex-Judge Charles Donohue, District-Attorney John R. Fellows, ex-Judge S. Burdett Hyatt, ex-Judge M. S. Isaacs, Judge George L. Ingraham, ex-Judge J. P. Joachimssen, ex-Judge J. H. McCarthy, Chief Justice David McAdam, ex-Judge Marcus Otterbourg, Chief Justice Sedgwick and ex-Judge G. M. Speir.

It may not be amiss in this connection to give a list of distinguished Superintendents of Asylums in the State of New York and outside that State who have recently united with the body since January 1, 1888.

We can say that a still larger number have united since the date given by the *Herald* during 1888, including names in the front rank of the legal and medical professions, as well as scientists and professors in the colleges

and universities who take an interest in these studies. The forthcoming congress will be a notable occasion, and members, active, honorary and corresponding, with all persons interested in the progress of forensic medicine, are invited to not only unite with the Society, but to submit papers, for the approaching congress in June, 1889.

PRIZE ESSAYS.

An essay was submitted in competition for the prizes, that had been published by a leading London house, over the author's name in the year 1886, and which had attracted attention in various countries.

The question was referred by the President, to the Executive Committee of the Medico-Legal Society, whether this essay should be allowed to compete. That Committee instructed the President to refer the question to a select committee, to be named by the chair.

Dr. Stephen Smith, ex-Commissioner in Lunacy, ex-Chief-Justice Noah Davis and E. W. Chamberlain, Esq., Treasurer of the Society, were named that Committee.

On July 2d that Committee submitted the following report:

2 WALL STREET, NEW YORK, July 2, 1888.

To HON. CLARK BELL, President, etc.

The undersigned, a Committee appointed by the Executive Committee of the Medico-Legal Society, to consider the question, whether a paper submitted for competition for prize essays in our list, should be received and entitled to compete, that had been published and issued to the public, respectfully report as follows :

We are of opinion that such a paper should not be received, and allowed to compete.

The purpose of offering such prizes, is to call new effort into the field, by invoking new and original productions.

To allow competition by articles already given to the public, is, or might be, to put into the scale against new and unpublished efforts, the public opinion which may have been already secured by the publication made.

It is not the intention, in determining the merits of essays, to allow any such prejudgment to affect the minds of the judges.

Each paper submitted is to come before the Committee on an equal footing in all respects, and that would not be the case if one or more had already been published, and had thereby secured favorable criticism, or condemnation. The intention is doubtless to require novelty in the essay, to the extent that it shall be original, and not previously made public.

The essay mentioned by the chairman in his note appointing this Committee, should not, we think, be allowed to compete.

Very respectfully,

STEPHEN SMITH, Chairman
NOAH DAVIS,
E. W. CHAMBERLAIN,
Committee.

The President thereupon appointed the following Committee to pass upon the merits of the various essays submitted:

Chairman—Ex-Chief-Justice NOAH DAVIS.

Secretary—E. W. CHAMBERLAIN, Esq., Treasurer
Medico-Legal Society.

Ex-Judge JOHN F. DILLON.

STEPHEN SMITH, M. D., ex-State Commissioner of
Lunacy of New York.

W. G. STEVENSON, M. D., Vice-President Medico-Legal
Society.

The action of this Committee will be announced at the September meeting of the Society, and we trust in time for the next issue of this JOURNAL.

THE MEDICO-LEGAL JOURNAL.

We enter upon our sixth volume, by the present number, with some feeling of pride, at the advances made in the recent past, in the science of medical jurisprudence in this country, and the world, as well as the work and influence of the Medico-Legal Society, in accomplishing these results.

1. The past year has marked the introduction of a series of prizes for essays, which have just closed on June 1st, ult., which will, we have no doubt, be a feature of the Society in the future.

2. The call for an International Congress, in this city, under the auspices of this body, for four days, commencing on first Tuesday of June, 1889, will bring invaluable contributions to the literature of this science, from scientists of all countries.

3. The movement to nationalize the Society, commenced only in January, 1888, has already assumed such proportions as to insure a success beyond our most sanguine expectations. We are enlisting the cream of the three professions, Law, Medicine and Chemistry, in the various States and territories, which cannot fail to make the International Congress of June, 1889, the most notable event that has hitherto occurred in the progress of the science in this country.

Large numbers of the newly elected members will attend and contribute papers, while the *savans* of other countries, who cannot attend, will be heard by their contributions.

4. We feel, therefore, justified in asking our subscribers, and especially any member of the Medico-Legal Society, and friend of the science, to personally and actively aid us, by extending our subscriptions to members of all professions, who are not members of the body.

This JOURNAL will give all lawyers, physicians and public officials, the latest news germane to these topics, and will enable any medical expert, or legal gentleman, to meet the questions constantly arising in their practice.

MISCARRIAGES OF JUSTICE.—Mr. JUSTICE BARRETT, of the New York Supreme Court, contributes a thoughtful article to *The Forum*, for May. We notice some of his suggestions, which are worthy the attention of the legal profession and the public.

1. “A constitutional amendment consolidating, in New York City, the three highest Courts into one great Tribunal, with an appellate branch of five judges sitting permanently throughout the legal year.”

This would be a great saving, would dispense with two out of the three present General Terms, and would enormously increase the capacity of our present judicial force to dispatch the public business. We think the profession would favor it.

2. A plan to abrogate or modify the present system of calendar delays—under the existing rules—which confessedly works badly.

3. Judge Barrett explains why the general criticism

as to the number of reversals is unfair, as it relates, not to a percentage of all the decisions, but only to the small relative number of those that actually come up for review.

4. As to Juries, that, by constitutional amendment, nine out of twelve should control a verdict, if approved by the Court, a suggestion of Mr. Chief-Justice Van Brunt.

He concludes a very able paper with these words, speaking of "the machinery of justice":—

"Behind the machinery there must be power—power adequate to its efficient working.

"That power can be supplied only by an enlightened public opinion, finding its expression in an able, upright and vigilant press."

The press can hardly be relied upon, especially in exciting public trials, as reflecting an *enlightened public opinion*.

Its attitude on recent great public trials, in which Mr. Justice Barrett took a conspicuous part, hardly entitles it to be called "upright," whatever might be said of its "vigilance."

There is as wide a gulch between "popular clamor," as reflected in the press—especially in prejudging and attempting to influence judicial action, in cases before trial—and "an enlightened public opinion," as that which divided Lazarus and the rich man, in our Lord's Parable.

It will be a sad day for the city, for the profession, for the administration of justice, when a judge on the

bench is influenced, much less intimidated or deterred, by the assaults, menaces or threats of the press, from giving accused persons that fair and impartial trial which has been the glory of English-speaking races.

In no country in the world, and in no city save New York, is it tolerated, nor has the press ever usurped the license to pass upon the guilt or innocence of accused persons, before and during their trial, or openly sought to intimidate judges in the discharge of their duties, not sparing the Chief-Justice of the highest court of the State.

There can be no greater danger to our judicial system than the daring and unlawful encroachments of the press, upon the rights of accused persons, and no sadder reflection than the growing public sentiment, that our judges are in danger of being, either intimidated, or improperly influenced, by that "popular clamor" of the press which it is so easy to designate as, or mistake for, "*enlightened public opinion.*"

NOTICE TO HONORARY, CORRESPONDING AND ACTIVE MEMBERS, MEDICO-LEGAL SOCIETY :—The President will feel obliged, if all who are willing to prepare papers for the International Congress of June, 1889, will notify him as early as possible, and also give the title of the paper, so that preliminary announcements may be made in September number of JOURNAL.

Papers are desired as well from those who are unable to attend as from those who can.

The movement to NATIONALIZE the Medico-Legal

Society has been so successful that it only needs a little effort on the part of every member to aid the Committeemen in the several States and Territories.

Blanks will be furnished each member, on application, and more than double could be added to the one hundred and thirty new members elected already the present year, before its close.

JOURNALS AND BOOKS.

DE L'EXAMEN MEDICAL DANS LES ASSURANCES SUR LA VIE. (F. B. BALLIERE ET FILS. PARIS (1887).—By far the most complete and scientific treatise on this subject that we have seen.

The name of the author and of his co-laborators is withheld, although the publishers assure us that he has for a long time been the physician of one of the great life insurance companies of Paris.

The work contains 571 pp., and is elaborate, giving each branch of the subject thorough examination and care. It is divided into three parts. The first relates to the etiology of applicants for life insurance, and gives great stress to heredity. The second to the pathological questions, and the third to the clinical examination.

Regarding as we do the great importance of the medical examination to the future of life insurance, we should be glad to see this work translated into English. Its value is greater here than in France, because America leads the world in life insurance, and must do so for some time.

THE AMERICAN JOURNAL OF PSYCHOLOGY. Edited by Prof. G. STANLEY HALL, Johns Hopkins University, Baltimore.

We are glad to welcome this journal, which must wield a prominent influence in the study of psychology. Prof. Hall is well equipped for such a labor, and the three numbers of the first volume published show that the subject is not only in able editorial hands, but that the best names are aiding in making it a first-class journal.

Dr. WILLIAM NOYES, of Bloomingdale Asylum, N. Y., contributes an interesting paper, entitled "Paranoia," with illustrations, to the last number, and Dr. EDWARD COWLES, of McLean Asylum, Massachusetts, an able paper on "Insistent and Fixed Ideas" to the February number. We shall notice this journal again, and we hope have more space to give it.

THE RELIGION OF PHILOSOPHY. By RAYMOND S. PERRIN. G. P. Putnam's Sons. 1885.

Whether we agree with this author in his religious opinions, or in his want of them, we can say without hesitation, that we recall no recent work which so succinctly, briefly and fairly epitomizes the various types of what we may call the philosophical schools, of ancient and modern faiths, as this.

We have a chapter devoted to the dawn of philosophic thought, one to the pre-Socratic period, the schools of Athens, of various types, the Alexandrian school, and the various scepticisms which have marked the free-thinking philosophers of the last and present century. He gives us the cream of the German transcendentalists, and the modern positive schools of France and of Scotland, in the first part of his work.

The second part is devoted to a careful and friendly analysis of the views of Herbert Spencer on the one hand, and of George Henry Lewes on the other, while the third part of the work is an attempt to outline the author's views under the cognomen of the Religion of Philosophy, by a search into the great popular beliefs of the world for reasons to justify his own. The ancient faith of the Egyptians, the doctrine of Buddha, the faiths of Greece, Rome, the religion of Mahomet, of Moses, of Christ, of Pantheism—all are reviewed; and the work concludes with an appeal to American women in behalf of the religion of philosophy.

We could never see value, or strength, in the views of the agnostics. They may, and will, interest and occupy thoughtful minds of educated men, but for women, we do not see that they have any, or but little, attraction.

It emasculates a woman, to lose her hold on faith. A woman without faith, is as a dead tree, over which the sirocco of the desert of unbelief has swept, and left it sere and withered. Who would dare take out of the history of mankind the influence of the mother's hand on the head of her child, as he knelt at her knee in childhood?

Any religion which lifts the soul to higher aspirations, purer life and nobler ideals, even if error, does not injure or degrade its devotees.

The faith of the Christian woman sustains her through life, lifts her soul to clearer, lovelier hopes of the hereafter, shields and befriends her in temptation, and in every ill, and sheds around her, as wife and mother, a lustre which gives to womanhood its loveliest type and form.

Before we tear down and shatter the faith of the mother whose hand rests on the head of her child in prayer, so long as he remains under her charge, let us be sure we put in its place something on which she can lean securely, in the hour of trial, temptation, the ills of life and the pains of death. The iconoclasts should be compelled to furnish us with newer and better idols before they destroy the old ones.

For men it is bad enough, but for women, who are to be our wives and the mothers of our children, one soul guided by a pure faith is worth a wilderness of doubts and unbeliefs.

DIAGNOSIS AND TREATMENT OF HEMORRHOIDS. By CHAS. B. KELSEY, M.D. (Geo. S. Davis, Detroit, Mich.). 1889.

This brochure is a thoughtful contribution to the medical profession of

the results and experience of one of our abler physicians, upon a subject best known to those who, like Dr. Kelsey, have made it the subject of special study.

It has less value in its medico-legal than in its medical and surgical aspects.

Dr. Kelsey advises how to correctly diagnose the disease, treats of the various forms which it assumes, the best treatment, and gives his views as to the ligature, treatment by injections, and the use of the clamp. It is well worth a place on the library shelf of the physician in general practice.

Books, Journals & Pamphlets Received.

AUSTIN ABBOTT.—Physiology of the Rogue (1888). Burr Printing House.

DR. THEO. S. ARMSTRONG.—Ninth Annual Report Binghamton Asylum for Chronic Insane (1887).

H. M. JONES, Supt.—Twenty-seventh Annual Report of Cincinnati Hospital (1887).

EDWARD COWLES, M.D.—Nursing—Reform for the Insane (1887).

WOMAN'S PUBLISHING CO.—April No. "Woman" (1888).

DR. W. W. IRELAND.—Weak-Minded Children (1888).

DR. HENRY LEFFMAN, }
WM. BEAN, M.A.— } Effect of Food Preservatives (1888).

DOCTOR FRANK.—Boston Journal of Health, Vol. I., No. 8.

DR. C. H. HUGHES.—The Neural and Psycho-Neural Factor in Gynæic Disease (1888).

MILTON JOSIAH ROBERTS, M.D.—International Journal of Surgery, Vol. I., No. 2.

L. W. BAKER, M.D.—The Alcohol Habit (1888).

HORACE WARDNER, M.D.—Occupation in Treatment of Insanity (1888).

PROF. M. D. EWELL.—Cornell University School of Law Announcement (1888-89).

HENRY HAZLEHURST, Esq.—The Handwriting of the Insane (1888).

STERLING ELLIOTT.—Novel Advertising (1888).

CHAS. B. KELSOY, M.D.—The Diagnosis and Treatment of Hæmorrhoids (1888).

COMMISSIONERS OF LOWER AUSTRIA.—Annual Report on Condition of Lunatic Asylums for Lower Austria (1886, 1887).

C. A. LINDSLEY, M.D.—Tenth Report Commissioners State Board Health (1887).

124 BOOKS, JOURNALS AND PAMPHLETS RECEIVED.

DR. O. W. ARCHIBALD.—Biennial Report North Dakota Insane Hospital (1886).

DR. JAMES D. MUNSON.—Reports of the Board of Commissioners and Trustees for the Northern Michigan Asylum (1886).

NORMAN KERR, M.D.—Report of the Homes for Inebriates' Association, and the Fourth Annual Report of the Dalrymple Home at Rickmansworth (1887-88), England.

EUGENE GRISSOM, M.D., LL.D.—Reports of the North Carolina Insane Asylum, at Raleigh, N. C. (1874, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887), and digest of laws relating to North Carolina Insane Asylum, 1867.

DR. W. W. GODDING.—Reports of the Government Hospital for the Insane (1855 to 1887), complete.

DR. O. R. LONG.—Report of the Michigan Asylum for Insane Criminals (1886).

DR. HENRY J. GARRIGUES.—The Improved Cæsarean Section. (1888.)

DR. ANDREW J. OURT.—Fifth Report Pennsylvania State Committee on Lunacy (1887).

R. H. CHASE, M.D.—Reports State Hospital for Insane, Southern District of Pennsylvania (1881, 1882, 1883, 1884, 1885, 1886), and the Various Points Involved in a Course Examination of the Brain and Spinal Cord.

HENRY F. CARRIEL, M.D.—Report of the Central Illinois Asylum for Insane (1886).

DR. A. E. PRINCE.—The Extraction of Cataract as Influenced by Mycological Development (1887). The Pulley Method of Advancing the Rectus (1888).

DAVID PRINCE, M.D.—An Aseptic Atmosphere—Club-Foot—A Rectral Obturator—Palatoplasty (1888).

A. REEVES JACKSON, A.M., M.D.—The Intra-Uterine Stem in the Treatment Flexions (1887). Conservatism in Gynæcology (1888).

HENRY J. REYNOLDS, M.D.—Stricture of the Urethra (1888). A New Method in the Treatment of the Vegetable Parasitic Diseases of the Skin (1887).

C. W. MOORE, M.D.—Water, its Impurities Gathered from the Air and Earth (1888).

DR. BENJAMIN LEE.—Proceedings of the Pennsylvania Sanitary Convention in May, 1888.

MARY PUTNAM JACOBI, M.D.—Thirty-ninth Annual Announcement Women's Medical College of Pennsylvania (1888-89)

NICHOLAS SENN, M.D., PH.D.—Experimental Contribution to Intestinal Surgery. Special Reference to Treatment of Internal Obstructions (1888).

J. B. MATTISON, M.D.—Cocaine Dosage and Cocaine Addictions (1888).

HAMPTON L. CARSON, ESQ.—The Weaver Case at Philadelphia (1888).

JOHN B. CHAPIN, M.D.—The Case of John Daly, at Washington (1888). Annual Report of the Department for the Insane, Pennsylvania Hospital, (1888).

EPHRAIM CUTTER, M.D.—Partial Syllabic Lists of the Clinical Morphologies of the Blood, Skin, etc. (1888).

FREDRICK PETERSON, M.D.—Some of the Principles of Craniometry (1888).

JAMES T. CRAWFORD, D.D.S.—Fourteenth Annual Announcement of the Medical Department of the University of Tennessee (1888).

MAGAZINES.

THE THEATRE.—Deshler Welsh makes his midsummer number very charming. The illustrations are exceedingly good.

LONDON MEDICAL RECORDER.—The May number gives an interesting account of the trial and conviction of Surgeon-Major Cross for poisoning his wife, taken from the paper read by Dr. C. Yelverton Pearson on the Medico-Legal aspects of the case, before the Irish Academy of Medicine.

INTERNATIONAL JOURNAL OF SURGERY.—An able new journal, edited by Dr. Melton J. Roberts, published quarterly, is an aspirant for new favor. Its second number appeared April, 1888.

THE FORUM, edited by Loretus S. Metcalf, is out for July, with an attractive table. Dr. Meredith Clymer writes on "The Stuff that Dreams are Made of," Senators Wm. E. Chandler and Geo. F. Edmunds write on "Our Southern Masters" and "The Political Situation," respectively. It is an attractive number.

THE ECLECTIC for July has a fine engraving of Leghorn, and its usual well-selected articles from current literature.

LITTELL'S LIVING AGE grows better and better.

THE JOURNAL OF NERVOUS AND MENTAL DISEASE.—We have not been able to see a copy since this journal changed hands, which we greatly regret.

THE SANITARY RECORD (London).—The May number contains a résumé of the Report of the Medico-Legal Society on "Best Method of Executing Criminals."

DENVER LEGAL NEWS says that Senator Langbien has crowded Mr. Evarts off the post of honor, as constructor of long sentences, by propounding a hypothetical question to Dr. James H. Forman in the case of Seligman vs. Seligman, containing in a single sentence 872 words.

CHICAGO LAW TIMES.—The July number has an engraving of ex-Chief-Justice Waite, a sketch of Judge Melville W. Fuller, and sketches of thirteen of the leading members of the Chicago Bar.

MAGAZINE OF AMERICAN HISTORY for July also publishes a full-length

frontispiece portrait of ex-Chief-Justice Waite and an account of his life and career. Judge Bacon, of Utica, writes on "The Continental Congress," with a very readable list of contributions.

THE OVERLAND MONTHLY grows better and better.

THE COSMOPOLITAN is making a good fight and we hope will surmount its difficulties.

NEW ENGLAND AND YALE REVIEW is as good as gold, and deserves the high reputation it has always maintained.

ANNALES MEDICO-PSYCHOLOGIQUES—Dr. A. MOTET contributed the *Cronique* to the July number, 1888. It reviews also the *Alienist and Neurologist* from 1883. Besides valuable original articles, it contains the transactions of the Société Medico-Psychologique, of Paris.

JEAN THEOPHILE GALLARD, M.D.

Dr. Gallard, who from its foundation, in 1868, was the Secretary of the Medico-Legal Society of France, was born at Gueret, France, February 10, 1828.

He was a student of the college at his native place, and graduated at TULLE, in 1844. He then entered *l'École Polytechnique*, of Paris, taking his degree in 1846.

He was decorated with a gold medal at the instance of the Mayor of the Ninth Arrondissement, in 1840, for distinguished services at the time of the cholera epidemic. Entering the Paris Hospital in 1850, he served as an interne under FALRET, JOBERT de LAMBALLE-VALLEIX and HUGUIER.

He won the prize of the gold medal from the Hospital, which entitled him to two years' further service, which he rendered, serving under BEHIER and his former master, VALLEIX. He was promoted to Hospital Physician in 1859. Serving in various capacities until 1865, he was made Physician-in-Chief of *La Petite*, which he again assumed, in 1867, after an absence. In 1881 he was promoted to the HOTEL DIEU, where he remained until his death.

Dr. GALLARD was a member of *La Société d'Observa-*

tion *La Société Anatomique*. He was Secretary of *La Société d'Emulation*, a member of *La Société Médical des Hospitaux*, *La Société de Medico-Chirurgicale*, *La Société de Médecine*, *La Société de Médecine Publique*, and had been President of the French Society of Gynécologie.

He, however, gave, the most valuable and considerable labors of his life to the French MEDICO-LEGAL SOCIETY, and while never the President, he was, in his relation of Secretary, intimately connected with its labors, and with the administration of each successive President, from its foundation.

He was decorated with the Legion of Honor in 1863, and was afterward promoted to the grade of "officer," for services rendered the wounded of the army of the LOIRE. He won great distinction in his profession, and especially as a gynécologist, founding the journal *Annales de Gynécologie et d'Obstétrique*, of which he was one of the editors at the time of his death. He was one of the leading French specialists, in forensic medicine, in gynécologie, pathology and public hygiene.

He was a prolific and painstaking writer in the domain of hygiene, medical jurisprudence, and pathology. It would take too much space to enumerate all his contributions. Those on forensic medicine worthy of note were :

MÉDECINE LÉGALE.

—Considération sur l'empoisonnement par la strychnine. *Mémoire lu à l'Académie de médecine*, 17 septembre et 7 octobre, 1862.

- Du rôle de l'expert et des conditions de l'expertise dans les cas de trans-
de la syphilis. *Union Médicale*, 1864.
- Sur l'empoisonnement par le phosphore. *Union médicale*, février, 1869.
- Accidents produits par des pastilles de calomel délivrées par un pharma-
cien sans ordonnance de médecin. *Journal de médecine et de chir.
pratiques*, 1874.
- Sur les expériences physiologiques comme moyen d'expertise médico-
légale pour la recherche de certain poisons. *Annales d'hygiène*, janv.
1866.
- De la prostitution et de l'extinction des malades vénériennes. *Annales
d'hygiène*, 1871.
- Sur un cas d'avortement suivi de mort. *Annales d'hygiène*, 1874.
- Sur la valeur de certains signes qui peuvent permettre de reconnaître
un avortement criminel. *Annales de gynécologie*, T. II., p. 245, 1874.
- De l'aphasie. *Union Médicale*, 1875,
- Responsabilité des actes commis par les épileptiques. *Société de médecine
légale*, 10 mai, 1875.
- Des dispositions législatives qu'il conviendrait de pendre afin de protéger
efficacement la société contre les actes violents des aliénés reconnus
dangereux. *Bullet. de la Société méd. légale*, T. IV et V., 1876 et 1877.
- De l'avortement au point de vue médico-légal. *Annales de gynécologie*,
1877.
- Crémation des morts. *Société de médecine légale*. 1876.
- Les opérations interdites aux officiers de santé, absence de sanction
pénale. *Annales d'hygiène et de médecine légale*, 1878.
- Atténuation de la responsabilité civile résultant d'une blessure légère
ayant entraîné la mort, parce que l'individu qui l'a reçue était anté-
rieurement affecté d'un état constitutionnel grave. *Bulletin de la Société
de med. légale*. T. IV, 1876.
- Considérations médico-légales sur la simulation. *Mémoire lu à l'Acadé-
mie de médecine* le 17 février, 1886.
- Les ecchymoses ponctuées sous-pleurales et sous-péricardiques n'ont
aucune signification spéciale en médecine légale. *Communication
au Congrès de médecine légale*, 12 août, 1878.
- Conditions légales exigées pour l'administration des anesthésiques. *Con-
grès de médecine légale*. 14 août, 1878.

It was a great misfortune to Dr. GALLARD that he did not speak or understand the English language. He had to depend upon others, as to his knowledge of forensic medicine, and its literature, in England and America.

He was frequently misled and in error in that regard. His death on the 31st of January, 1887, deprived the Medico-Legal Society of France, of one of its ablest and most indefatigable workers, and forensic medicine, of one of its most brilliant students and writers.

He leaves an interesting family, and his son, Dr. Frank Gallard, is a rising member of the profession in Paris.

C. B.

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THE RECENT JUDICIAL DEPARTURE IN IN-SANITY CASES.

BY CLARK BELL, ESQ.,
President of the Medico-Legal Society of New York.

There is probably no race of men more devoted to, or controlled by, traditional rules and policy, than the ANGLO-SAXON.

What our fathers did, we accept without question or examination, and it takes half a century at least, to get an Englishman or his descendant, to be willing even to inquire, as to the *right* or *propriety*, of changing a rule in universal use and acceptance, by his ancestors.

By the ancient law of England, *madness*, was not a defence, on an indictment for murder.

If it appeared on trial that an accused was mad, there was such a special verdict, on which the Crown could pardon *

In the most notable cases of the last century, *Rex vs. Arnold* (16 St. Tr. 695—1724); *Rex vs. Lord Ferris* (19 St. Tr. 886—1760); *Rex vs. Hadfield*, (27 St. Tr. 1281—1800), these questions came up for discussion, and Lord Erskine's speech in defence of Hadfield, who was undoubtedly a lunatic, and in a state of furious mania, was then regarded as a masterly innovation, upon the existing state of the English law.

Up to the beginning of the present century, there was no authoritative decision, of the High Courts of England upon this question, and our only reported cases, are those

* 1 Rot. Par. 443; B. 3 Edws. 2 (1310); Fitz Herbert *cerone* 351; (3 Edws. 3 1330.)

of the simple dicta, of a single trial judge, in important criminal trials, as they came down to us, in the reported State trials of the eighteenth century.

SIR JAMES FITZ JAMES STEPHEN, by far the ablest writer upon the criminal law of England, in reviewing it historically, writing as late as his treatise on the "History of the Criminal Law of England" (1883), says:

"I know of no single instance, in which the Court for Crown Cases reserved, or any other Court, sitting in *banc*, has delivered a considered written judgment, on the relation of insanity to criminal responsibility, though there are several of such decisions, as to the effect of insanity on the validity of contracts and wills."*

The present state of the law of England may be said to be due, to the excitement growing out of the acquittal of MCNAGHTEN, for the killing of Mr. Drummond in 1843, whom he shot, mistaking him for SIR ROBERT PEEL.

The medical evidence in that case was :

"That a person of otherwise sound mind might be affected with morbid delusions ; that the prisoner was in that condition ; that a person laboring under a morbid delusion might have a moral perception of right and wrong, but that, in the case of the prisoner, it was a delusion which carried him away beyond the power of his own control, and left him no such perception, and that he was not capable of exercising any control over acts which had a connection with his delusion ; that it was the nature of his disease to go on gradually, until it reached a climax, when it burst forth with irresistible intensity ; that a man might go on for years quietly, though at the same time under its influence, but would at once break out into the most extravagant and violent paroxysms. The questions left to the jury were : ' Whether at the time the act in question was committed, the prisoner had or had not, the use of his understanding, so as to know that he was doing a wrong and a wicked act ; whether the prisoner was sensible at the time he committed the act, that he violated both the laws of God and man.' " (1 Russ. Cri. 121.)

The prisoner being acquitted, the House of Lords submitted to the judges certain questions, which were

* Stephen's Hist. Crim. Law of England, vol. 2, p. 152.

answered in June of that year, since which date the English judges in criminal trials have usually followed the language of the answers thus given.

The 2d and 3d questions submitted to the judges by the Lords, and their answers, were :

Question 2.—“ What are the proper questions to be submitted to the jury when a person, afflicted with insane delusions, respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for instance), and insanity is set up as a defence ? ”

Question 3.—“ In what terms ought the question be left to the jury as to the prisoner's state of mind at the time the act was committed ? ”

Answers 2 and 3.—“ As these two questions appear to us to be more conveniently answered together, we submit our opinion to be, that the jury ought to be told in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary, be proved to their satisfaction. That to establish a defence on the ground of insanity, it must be clearly proved, that at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality, of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act, knew the difference between right and wrong ; which mode, though rarely, if ever, leading to any mistake with the jury, is not, we conceive so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong, in respect to the very act, with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe, that an actual knowledge of the law of the land was essential in order to lead to a conviction ; whereas the law is administered on the principle, that every one must be taken conclusively, to know it without proof that he does know it. If the accused was conscious, that the act was one which he ought not to do, and if the act at the same time was contrary to the law of the land, he is punishable, and the usual course, therefore, has been to leave the question to the jury, whether the accused had a sufficient degree of reason, to know that he was doing an act that was wrong ; and this course we think is correct, accompanied with such observations and corrections, as the circumstances of each particular case may require ” (p 127 *et seq.*)

It is not my purpose to go into a criticism of these answers in detail.

I shall content myself with stating that—

1. They were not the decision of any court of crimi-

nal jurisdiction, based upon evidence taken in a judicial proceeding.

2. That they are, as Sir James Stephen has so well stated: "Mere answers to questions which the judges were probably under no obligation to answer, and to which the House of Lords had probably no right to require an answer, as they did not arise out of any matter judicially before the House." (Ib. vol. 2., p. 154.)

3. The most that could be legally claimed for these answers, as to their legal binding force and effect, would be, that they were the individual opinions of fourteen out of fifteen of the then English judges, on answers to hypothetical questions, not in a judicial proceeding, and in a strictly legal and judicial sense, mere *obiter dicta*.

A critical examination of these questions and answers, will show, that the construction since given to them by English judges in criminal trials, has lent them a significance, force and I might say construction, not covered by the terms of the questions and answers themselves, because the answers are so closely confined to the narrow scope of the questions, as to leave many cases outside them, which might unthinkingly be supposed to be included in and covered by them.

Whatever may be thought or said, of these questions and answers, or of the course of the English judiciary in accepting these *dicta* of the judges, as a statement of the law, it is a fact that from 1843 to a very recent date, it has been usual for the English trial judges, to charge the jury, in cases where the defence of insanity was interposed, as to the question of responsibility:—

That it must be clearly proved "*that at the time of the committing of the act, the accused was laboring, under such a defect of reason from disease of the mind, as not to*

know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

Sir James Stephen represents what I esteem to be the ablest and best legal view upon this subject when he says, speaking of the answers to the 2d and 3d questions : "That the form of the questions is very general, and the answers can hardly be meant to have been exhaustive. (Ib. p. 159.) That the word 'wrong' is ambiguous, as well as the word 'know.'

"It may mean either 'illegal' or 'morally wrong,' for there may be such a thing as illegality not involving moral guilt, and when we come to deal with madness, the question whether 'wrong' means 'morally wrong' or only 'illegal' may be important." (Ibid. 167.)

In an exhaustive analysis of the whole subject, the chapter on the relation of madness to crime in his masterly treatise, he concludes, that the true signification of these questions and answers, are not what they have been commonly stated by English judges to be when he says :

"The proposition, then, which I have to maintain and explain is, that, if it is not, it ought to be the law of England, that no act is a crime if the person who does it, is at the time when it is done, prevented either by defective mental power, or by any disease affecting his mind, from controlling his own conduct, unless the absence of the power of control, has been produced by his own default. The first part of this proposition may probably appear to many persons to be self evident. How, it may be asked, can a man be responsible for what he cannot help? That a man can be made responsible in the sense of being punished for what he cannot help is obvious. Whether he ought be made responsible, that is, whether it is expedient that people so situated should be punished in such cases, depends upon the question, What is meant by a man's not being able to help doing what he does?" (Ibid. 163.)

It is important also to note, that the mere knowledge of right and wrong in the abstract sense, as involving a knowledge of the law of the land, is not suggested as the

best test by the judges, but the party's knowledge of right and wrong, in respect to the very act with which he is charged, and the trial judges have since usually followed this idea

The medical profession of England at once put itself unanimously, against the view and practice of the English judges, who made the knowledge of right and wrong a test of responsibility for the insane. (Resolutions of the British Associations of Medical Superintendents, July 14, 1844.)

In some of the American States, the judiciary have followed the practice of the English judges, and charged juries, making the knowledge of right and wrong, the test of criminal responsibility, in cases of insanity, notably, New York, Pennsylvania, Massachusetts, Michigan, Alabama, Ohio, and many others.

Writers, however, on both sides the Atlantic, legal and medical, with few exceptions, denounce the test of "right and wrong" as laid down by the English judges, and hold it to be inconsistent with the progress of science, the civilization of the age, and contrary to the well known experience of mankind. Among legal writers aside from those cited, are J. Balfour Browne ;* Wharton and Stille ;† Bishop‡, on Criminal Law ; Wharton,§ Criminal Law ; Ordonaux;|| Lord Erksine in Hadfield's Case ; Lord Denman in Rex vs. Oxford, and many others later, while among medical men Ray,¶ Bucknill and Tuke,** Beck and indeed the whole profession of medical writers and thinkers, condemn this rule.

* Browne's Med. Jur. §§ 18 *et seq.*

† Wharton and Stille, § 59

‡ 1 Bish Criminal Law (7th ed.), § 336 *et seq.*

§ Wharton's Crim. Law, § 33, 34, 35.

|| Ordonaux on Insanity, 419.

¶ Ray's Med. Jur., § 16-9.

** Bucknell and Tuke, p. 269.

Among the English writers, however, Baron Bramwell not only defends the test, but justifies it on principle, and advances what he insists are strong logical reasons, why the insane should be punished, even with greater severity than the sane, for violations of law.

Sir James Stephen says: "It is, indeed, more difficult to say, why a dangerous, incurable madman, should not be painlessly put to death as a measure of humanity, than to show why a man who being both mad and wicked deliberately commits a cruel murder, should be executed as a murderer. (Hist. of Crim. Law, 78.)

The discussion of this subject has been unfortunately embittered, distracted, and I feel sure a reasonable solution delayed, by the intemperate language used by medical writers, in criticising the dicta of judges and the opinion of eminent lawyers, especially in Great Britain.

These assaults, so far as I have been able to find on a careful examination, have usually been the result of misconceptions in the medical mind. Objects sometimes seem to take on a color from the lens, through which we regard them, that they do not in fact have.

The mountain is not really blue or green; it is the glass of our spectacles that produce, what seems to be a natural, but what is in fact a false effect.

I doubt if BARON BRAMWELL would have written his article in the *Nineteenth Century Magazine*,* except on provocation, given by medical writers, following such scathing denunciations as that with which Dr. HENRY MAUDSLY assailed the English Bench in his *Responsibility in Mental Disease*,† and like criticisms.

SIR JAMES STEPHEN well says: "Sarcasm and ridicule are out of place on the bench, in almost all conceivable

* Insanity and Crime. *Nineteenth Century Magazine*, Dec., 1885.

† Responsibility in Mental Disease, preface, p. vii.

cases." when commenting on quite as intemperate language from judges on the Bench, concerning medical expert witnesses. Let us hope that the era of temper and passion has past, and that we can now in both professions, law and medicine, discuss this important issue without passion, prejudice or violent language.

It may be proper to notice some of the positions assumed by BARON BRAMWELL in his paper, which is his personal view, and should not be construed as a judicial decision, or in any sense as of binding force, as a judicial statement of the law of England. It is, and, only claimed to be, his private opinion.

The law does not anywhere make, the mere fact of insanity, an excuse for or a defense to, a charge of crime.

Medical men ought not to contend, that the slightest disease of the brain, should exempt from responsibility, *per se*. The abler doubtless concede this. The question is or should be, how far does the delusion dominate the volition? Or in another class of cases, as Sir James Stephen puts it, "Was the accused deprived, by a disease affecting the mind, of the power of passing a rational judgment, on the moral character of the act, which he meant to do?"

On the trial of McNaghten, the medical evidence under or on which the jury acquitted was clear, that he was laboring under a delusion, which carried him away beyond the power of his own control. That he was not capable of exercising any control, over his acts which had any connection with his delusion."

The charge there was, "whether the prisoner had or had not, the use of his understanding, so as to know that he was doing a wrong and wicked act, whether the prisoner was sensible at the time he committed the act, that he violated both the law of God and man."

There is but little doubt that the jury believed in McNaghten's case that he was so far, insane as to be entirely dominated by his delusion, and that he was not therefore criminally responsible.

The test proposed by BARON BRAMWELL is, "*That the law should punish all whom it threatens on conviction. That it ought to punish all who would be influenced by the threat, all whom it would or might deter, or help to deter: that the question should be, not whether the person accused of crime is mad, but whether he understood the law's threat.*"

This sounds specious, but is not the law of England now, nor was it ever. The law threatened McNaghten, yet he was acquitted, because his delusion dominated his will, in the opinion of the jury. "He could not help it." The law did not, and could not deter him.

The law threatened HADFIELD. He knew well the nature and character of the act. He well knew it was high treason. He knew this was a crime punishable under the English law with death, and his object was that he might be put to death, to save the world.

By BARON BRAMWELL'S test, Hadfield should have been convicted, and he so asserts in his paper.

But his delusion evidently dominated his will power.

He could have committed suicide, and attained his end, but desired rather that his life should be taken by others, through the channel of punishment for crime.

LORD KENYON stopped the prosecution, before ERSKINE had called half his witnesses for the defence. Why? The law did threaten Hadfield. Baron Bramwell considers that the law, instead of acting as a deterrent, actually was an inducement. It assisted him in his delusion, and furnished him with the means of the accomplishment of his insane purpose.

I assume, as a lawyer, that Baron Bramwell would consider, that the act of LORD KENYON, the trial judge, in stopping the prosecution and dismissing the case, was a judicial decision of an English court of competent jurisdiction, which judicially established as the law of that case, that HADFIELD'S act was *not* a violation of English law.

That decision of Lord Kenyon has not been reversed, overruled or set aside, by any English court of competent jurisdiction, and it is English law to-day, higher than the opinion of any judge off the bench, upon an abstract question, in a polemical controversy, even if it were the Lord Chief Justice. Baron Bramwell may differ in opinion with Lord Kenyon. He may think the latter's decision was erroneous, but how can he claim that the decision is not an authority as English law till overruled or set aside.

Baron Bramwell's proposed test is both novel and *new*.

It is not a safe test in many respects :

1. He would exempt all who do not understand the law's threat.

Ignorance of the law has ever been held to be no defence for crime.

One who really did not know of the law he was violating, should he be excused ?

2. All who would be in any degree influenced by the law's threat, or whom it would or might deter.

- a.* Do not threats of personal harm oftentimes deter the insane, from acts not necessarily wrong, but which influence their conduct ?

- b.* Are not the insane influenced by threats of punishment, by mechanical restraints, solitary confinement, placing in undesirable wards, etc. ?

- c.* Baron Bramwell claims that because the insane in

asylums, can be influenced by threats in the control of their conduct, or by what may be called asylum discipline, that they are under the law's threat, and therefore responsible.

I concede that they are constantly so influenced, but where does this lead to? Not necessarily to responsibility.

Would BARON BRAMWELL say, that under the law of England, an incurable lunatic, an inmate of an asylum, should be hung, for the homicide of a keeper, physician, or even another inmate? Has such a thing happened? Can it occur? Yet the law threatens him. He knows right from wrong, and knows he is doing wrong, and he is influenced by, and is under the threat of the law, if Baron Bramwell is correct.

It is a question of degree, this power of the will. A homicidal or suicidal lunatic, threatened with a strait-jacket by his keeper, or with hyosciamus by a physician, might be able to abstain from a given line of forbidden conduct, in an asylum, and yet be wholly unable to resist killing another in the one case, or himself in the other, if the watch upon him was intermitted an instant.

d. The ability to comprehend the law's threat, must be considered in connection with, and in relation to the will power of the lunatic, to resist or overcome the impulse or delusion.

Does the delusion dominate the will? Could he help it? should be the question.

Baron Bramwell, in the *Dove* case, whom he describes as "undoubtedly of questionable sanity;" and in another as "such a madman as Dove," is reported to have himself suggested as a test, "*Could he help it?*" a much better and safer one, than that propounded in his paper, and nearer the true meaning of the English law.

What are legal punishment for offences? How insti-

tuted, how justified? Human society has always justifiably exercised the right, of regulating human conduct, by laws enacted under regular forms for punishing offenders. The theory is that majorities must rule.

The protection of the rights of man, involves and necessitates punishment for human wrongs.

No one doubts the right of society, to take a human life as penalty for murder.

Society has the same right to execute an insane man, as a sane. I speak in the sense of power or authority.

The North American savage, killed the insane on the theory, that he was of no further use to himself or the tribe.

It is said that the Chinese kill the hopelessly insane. A homicidal lunatic at large is a popular danger. Society would be justified in passing laws, to execute every insane person or to place under restraint every insane member, if the requisite majority of the law-making power, united in believing that the general welfare of the State, would be thus benefited. It is common to say this doctrine is *barbarous*. It is, perhaps, barbarous for the law to hang a man, sometimes, bloody, hideous, ghastly. *It is still the law.*

I quite agree with the Baron, in what he says about the object of punishment, "The law does not punish for revenge, but for prevention." "Punishment is not threatened out of revenge or spite." Society could never justify itself, in taking a human life, in any retaliatory spirit, or in the slightest sense of vindictive reparation, or expiation for crime. No writer has in our day, claimed that.

How far the insane person had the *actual power* to resist, was conscious of the nature of the act, threatened by the law, and to some extent even influenced by it,

would be a safer legal test than the one proposed by the Baron, who considers that under the latter, most cases of offenses by the acknowledged insane, would be followed by conviction and punishment. There is not, but if there was, there should be nothing in the law of England, that would force us to such an attitude, towards that unfortunate class, whom the EARL OF SHAFTESBURY so well described, as the most unfortunate because the most friendless of the human race.

All men who reflect, or examine the insane know, that a very large per cent. of the inmates of Insane Hospitals, including all who have any glimmer of reason often know right from wrong, the nature and degree of punishment for crimes, and yet no one would, in the nature of things, recognize such a test, in case of homicides occurring among the inmates of asylums, nor do the judges pretend to do so, in either country, in that class of cases, where the offences were committed in the institutions for the insane.

The practical enforcement, of such a test of responsibility for the insane, as that stated in the answers of the English judges, was followed by the conviction in the American states, of many confessedly insane persons, their frequent execution, creating public excitement and distrust, of our criminal procedure, in the popular mind.

The whole path of judicial decisions during, the last part of the present century, is illustrated by rows of scaffolds,—a reproach upon our civilization,—on which have perished the insane, convicted by juries, under the direction of judges, who made knowledge of right and wrong, the test of criminal responsibility !

The judiciary in some of the American states, realizing the evil, commenced to grapple, with the issue.

In New Hampshire Judge DOE wrote a masterly opinion of the Court, in *State vs. Pike*, repudiating the rule of the *McNaghten Case* (49 N. H., p. 399), (50 N. H., 369). And similar decisions followed in Kentucky (*Kriel vs. Com.*, 5, *Bush (Ky.)*, 362), *Smith vs. Com.*, 1 Duv. (Ky.), 224; in Virginia (*Dejarnette vs. Com.*, 75 Va., 876; in Mississippi (*Cunningham vs. State*, 56 Miss., 269); in Connecticut (*State vs. Johnson*, 40 Conn., 136), *Anderson vs. State*, 43 Conn. 514; in Iowa (*State vs. McWhorter*, 46 Iowa, 88), *State vs. Feltes*, 35 Iowa, 68); in Illinois (*Hopp vs. People*, 31 Ill., 385); in Indiana (*Bradley vs. State*, 31 Ind., 492); in Texas (*Harris vs. State*, 18 Tex. Court of Appeals, 87); in Pennsylvania (*Coyle vs. Com.*, 100 Pa., p. 573); in Georgia (*Roberts vs. State*, 3 Ga., 310); in Massachusetts (*Com. vs. Rogers*, 7 Metc., 500.)

In England the conviction of men confessedly insane, under the charge of judges, insisting upon the right and wrong tests, and notably the later cases of *Goldstone* and *Cole*, led to such excitement in the public mind, that the execution of the insane, thus convicted was finally averted by a medical inquiry, after sentence, under the authority of the Home Secretary, and the unfortunates were placed in Broadmoor Asylum for what are called insane criminals, during her majestys pleasure.

In America they were usually executed, as in cases of *Guiteau*, *Dr. Beach*, *Taylor* and others in Pennsylvania, the executives sometimes, not being willing, to institute the necessary medical inquiry after conviction, though the law provided for it, in nearly all cases. In New York, however, Governor Hill has always instituted the medical inquiry after conviction, if any doubt or question existed, though in Pennsylvania Governor Pattison refused such an application, in case of *Beach* though strongly urged, and high medical

authority pronounced him insane, and probably wholly unconscious when committing the act. The President of the United States, did not authorize such an inquiry in case of GUILTEAU, which is a source of regret. The post-mortem demonstrated his insanity, which post-mortems frequently do not establish where insanity really exists. The writer heard Guiteau's address to the jury on the trial, in which he laughed, shed tears, sang poetry, acting like an insane person, strongly indicating that he had lost will power, and was dominated by his delusion.

A high medical authority states, that in England, these judicial scandals, are now substantially averted, by an instruction given from the Home Office to Government counsel, in the criminal courts, to institute an inquiry in every case, where there is any reason to suspect insanity exists, or will be pleaded; to be conducted by the judges before the trial, by the examination of leading and acknowledged competent medical experts, and that in consequence, we are not likely to see insane persons executed, except very rarely, in that country, under the present law ; but in our own country, in more than half the states, the right and wrong test is still in force, and the insane are constantly convicted, and often executed.

Two notable events have occurred recently, bearing directly upon these questions, so important in their influence and consequences, that I have felt it a matter of duty, to call the attention of the Medico-Legal Society to them, and through the press to the notice of the scientific world, as reflecting the progress or evolution of American judicial thought, upon this subject.

The first was the case of PARSONS, tried in the State of Alabama, for murder, and the latter the case of DALY, tried recently in the District of Columbia, for the same offense.

I submit the opinion of the Supreme Court of last resort in Alabama, as furnished me by Judge H. M. Somerville, a member of the Medio-Legal Society, regarding it as I do, as the most able and scholarly recent review of the question, without remark, except to say; that the decision of this case repudiates the rule in *McNaghten* case in Alabama, where hitherto it had obtained, and adds that state to the list of American States where it no longer is followed.

Judge Somerville for many years has been a member of the Board of Managers of the Alabama State Hospital for the Insane at Tuscaloosa, and has a personal and practical knowledge of the insane, which eminently fits him for the careful examination of this subject, which the opinion adopted by the court exemplifies.

PARSONS v. STATE; SUPREME COURT OF ALABAMA.—OPINION OF SOMERVILLE, J.

Indictment for Murder.

1. *Insanity as a defense; proper rule of legal responsibility.*—The capacity to distinguish between right and wrong, either abstractly or as applied to the particular act, as a legal *test* of responsibility for crime, is repudiated by the more advanced authorities, legal and medical, who lay down the following rules which the court now adopts: (1), where there is 'no such capacity to distinguish between right and wrong, as applied to the particular act, there is no legal responsibility; (2), where there is such capacity, a defendant is nevertheless not legally responsible, if, by reason of the *duress* of mental disease, he has so far lost the *power to choose* between right and wrong, as not to avoid doing the act in question, so that his free agency was at the time destroyed; *and*, at the same time, the alleged crime was so connected with such mental disease, in relation of cause and effect, as to have been the product or offspring of it *solely*.

2. *Delusional insanity; the same rule.*—The same rule applies to delusional insanity, and necessarily conflicts with the old rule laid down by the English Judges, in *McNaghten's Case*, that, in case of delusion, the defendant, "must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion exists were real." (The 4th head-note in *Boswell's Case*, 63 Ala. 303, on this point pronounced *obiter dictum*.)

3. *Insanity as a disease; question for jury.*—The existence or non-existence of the disease of insanity, such as may fall within the above rule, is a

question of fact to be determined in each particular case by the jury, enlightened if necessary, by the testimony of experts.

4. *Same; burden of proof; reasonable doubt.*—When insanity is set up as a defense in a criminal case, it must be established to the satisfaction of the jury by a preponderance of the evidence, and a reasonable doubt of the defendant's sanity, raised by all the evidence, does not justify an acquittal.

5. *Special venire; and service of copy on defendant.*—Under the provisions of the act approved February 17, 1885, regulating the drawing and summoning of jurors (Acts Ala. 1884-85, pp. 181-87), the special *venire* for a capital case consists of the regular jurors for the week, and the additional jurors (not being less than twelve nor more than twenty-four) drawn by the presiding judge in open court; and a copy of the names of these jurors being served on the defendant, it is no objection that some of them were not then summoned, or were not summoned at all.

6. *Non-experts as witnesses in insanity cases.*—The rule on this subject, stated *Ford's Case*, 71 Ala. 385, adhered to, that while non-experts may give their opinions, on the question of the defendant's alleged insanity, such opinions must first be prefaced by a statement of the facts upon which it is based.

Appeal from City Court of Birmingham.

Tried before the Hon. H. A. SHARPE.

The indictment in this case charged that the defendants, Nancy J. Parsons and Joe Parsons, unlawfully and with malice aforethought, killed Bennett Parsons by shooting him with a gun.

On said trial the evidence, on behalf of the State, tended to show, that the defendants, Joe Parsons and Nancy J. Parsons, murdered Bennett Parsons on January 31, 1885, by shooting him with a gun.

The evidence on behalf of defendants tended to show, that defendant, Joe Parsons, was, at the time of said killing, and had always been an idiot; and that defendant, Nancy Parsons, was, at the time of said killing, insane; that the act of Nancy, assisting in the killing of deceased, was the result of an insane delusion, that deceased possessed supernatural power to afflict her with disease, and power, by means of a supernatural trick, to take her life; that deceased by means of such supernatural power, had caused said Nancy to be sick and in bad health for a long time, and that her act at the time of said killing, in assisting therein, was under the insane delusion that she was in great danger of the loss of her life from deceased, to be effected by a supernatural trick. The defendant, Nancy, was the wife of deceased, and defendant, Joe, was his daughter. The evidence also tended to show insanity for two generations, in the families of said defendants.

The defendant, Joe, offered to prove by Mrs. James Nail, that "she had known Joe Parsons from her infancy, that she has been idiotic all her life, and she is idiotic now, and that she has seen her frequently during her acquaintance with her, and has often conversed with her." The State objected to the introduction of said evidence, which objection the court sustained, and defendants excepted.

The Court, *ex mero motu*, charged the jury that, "When insanity is relied on as a defense to crime, and such insanity consists of a delusion merely,

and the defendant is not shown to be otherwise insane, then such delusion is no justification or excuse of homicide, unless the perpetrator was insanely deluded into the belief of the existence of a fact or state of facts which, if true, would justify or excuse the homicide under the law applicable to sane persons." The defendants duly excepted to the giving of this charge.

The court gave the following, among other charges, at the request of the State, to which defendants duly excepted :

" 2. It is only insanity of a chronic or permanent nature, which, on being proved, is presumed to continue; there is no presumption that fitful and exceptional attacks of insanity are continuous."

" 5. If the jury believe from all the testimony that the defendants at the time of the killing, were in such a state of mind as to know, that the act they were committing was unlawful and morally wrong, they are responsible as a sane person, if the jury believe they committed the act with which they are charged."

The defendants asked the following charges, in writing, which the court refused to give, and to which rulings of the court exceptions were duly reserved.

" 6. In order to constitute a crime the accused must have memory and intelligence sufficient to know, that the act she is about to commit is wrong, to remember and understand that if she commits the act she will be punished, and besides this, reason and will to enable her to comprehend and choose between the supposed advantage at the gratification to be obtained by the criminal act, and the immunity from punishment which she will secure by abstaining from it."

" 8. If the jury believe from the evidence that the prisoners or either of them, was moved to action by an insane impulse controlling their will or their judgment, then they are, or the one so affected, is, not guilty of the crime charged."

" 12. If the jury believe from the evidence, that the prisoners committed the act in a manner which would be criminal and unlawful, if they were sane, the verdict should be "not guilty," if the killing was an offspring or product of mental disease in the prisoner.

The jury, on their retirement, found the defendants guilty of murder in the second degree, and this appeal is prosecuted from the judgment rendered on such finding.

Smith & Lowe and Wm. Bethea, for appellants.

T. N. McClellan, Attorney-General, *contra*.

SOMERVILLE, J.—In this case the defendants have been convicted of the murder of Bennett Parsons, by shooting him with a gun, one of the defendants being the wife, and the other the daughter of the deceased. The defense set up in the trial was the plea of insanity, the evidence tending to show, that the daughter was an idiot, and the mother and wife a lunatic, subject to insane delusions, and that the killing on her part was the offspring and product of those delusions.

The rulings of the court raise some questions of no less difficulty than of interest, for, as observed by a distinguished American judge, "of all medico-legal questions, those connected with insanity are the most difficult and

perplexing."—Per DILLON, C. J., in *State v. Felter*, 35 Iowa, 67. It has become of late a matter of comment among intelligent men, including the most advanced thinkers in the medical and legal professions, that the deliverances of the law courts, on this branch of our jurisprudence have not heretofore been at all satisfactory, either in the soundness of their theories, or in their practical application. The earliest English decisions, striving to establish rules and tests on the subject, including alike the legal rules of criminal and civil responsibility, and the supposed tests of the existence of the disease of insanity itself, are now admitted to have been deplorably erroneous, and to say nothing of their vacillating character, have long since been abandoned. The views of the ablest of the old text writers and sages of the law were equally confused and uncertain in the treatment of these subjects, and they are now entirely exploded. Time was in the history of our laws, that the veriest lunatic was debarred from pleading his providential affliction as a defence to his contracts. It was said, in justification of so absurd a rule, that no one could be permitted to stultify himself by pleading his own disability. So great a jurist as Lord Coke, in his attempted classification of madmen, laid down the legal rule of criminal responsibility to be, that one should "*wholly* have lost his memory and understanding;" as to which Mr. Erskine, when defending Hadfield for shooting the King, in the year 1800, justly observed: "No such madman ever existed in the world." After this great and historical case, the existence of delusion promised for a while to become the sole test of insanity, and acting under duress of such delusion was recognized in effect, as the legal rule of responsibility. Lord Kenyon, after ordering a verdict of acquittal in that case, declared with emphasis, that there was "no doubt on earth" the law was correctly stated in the argument of the counsel. But, as it was soon discovered that insanity often existed without delusions, as well as delusions without insanity, this view was also abandoned. Lord Hale had before declared that the rule of responsibility, was measured by the mental capacity possessed by a child fourteen years of age, and Mr. Justice Tracy, and other judges, had ventured to decide that, to be non-punishable for alleged acts of crime, "a man must be totally deprived of his understanding and memory, so as not to know what he was doing—no more than an infant, a brute, or a *wild beast*."—*Arnold's Case*, 16 How. St. Tr. 764. All these rules have necessarily been discarded in modern times, in the light of the new scientific knowledge acquired by a more thorough study of the disease of insanity. In *Bellingham's Case*, decided in 1812, by Lord Mansfield at the Old Bailey, (Coll. on Lun. 630), the test was held to consist in a knowledge that murder, the crime there committed, was "against the laws of God and nature," thus meaning an ability to distinguish between right and wrong in the abstract. This rule was not adhered to, but seems to have been modified so as to make the test rather a knowledge of right and wrong as applied to the particular act.—Lawson on Insanity, 231, § 7 *et seq.* The great leading case on this subject in England, is *McNaghten's case*, decided 1843 before the English House of Lords, 10 Cl. & F. 200; s. c., 2 Lawson's Cr. Def. 150. It was decided by the Judges in that case, that, in order to entitle the accused to acquittal, it must be clearly proved that, at the time of committing the offense, he was laboring under such a defect of reason,

from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did, not to know that what he was doing was wrong. This rule is commonly supposed to have heretofore been adopted by this court, and has been followed by the general current of American adjudications.—*Boswell v. The State*, 63 Ala. 307; s. c., 35 Amer. Rep. 20; s. c., 2 Lawson's Cr. Def. 352; *McAllister v. State*, 17 Ala. 434; Lawson on Insanity, 219-221, 231.

In view of these conflicting decisions, and of the new light thrown on the disease of insanity, by the discoveries of modern psychological medicine, the courts of the country may well hesitate, before blindly following in the unsteady footsteps found upon the old sandstones of our common law jurisprudence a century ago. The trial court, with prudent propriety, followed the previous decisions of this court, the correctness of which, as to this subject, we are now requested to review. We do not hesitate to say that we reopen the discussion of this subject with no little reluctance, having long hesitated to disturb our past decisions on this branch of the law. Nothing could induce us to do so, except an imperious sense of duty, which has been excited by a protracted investigation and study, impressing our minds with the conviction, that the law of insanity as declared by the courts on many points, and especially the rule of criminal accountability, and the assumed tests of disease, to that extent which confers legal irresponsibility, have not kept pace with the progress of thought and discovery, in the present advanced stages of medical science. Though science has led the way, the courts of England have declined to follow, as shown by their adherence to the rulings in *McNaghten's case*, emphasized by the strange declaration made by the Lord Chancellor of England, in the House of Lords, on so late a day as March 11, 1862, "that the introduction of medical opinions and medical theories into this subject, has proceeded upon the vicious principle of considering insanity as a disease!"

It is not surprising that this state of affairs has elicited from a learned law writer, who treats of this subject, the humiliating declaration, that, under the influence of these ancient theories, "the memorials of our jurisprudence are written all over with cases, in which those who are now understood to have been insane, have been executed as criminals."—1 Bish. Cr. Law (7th Ed.), § 390. There is good reason, both for this fact, and for the existence of unsatisfactory rules on this subject. In what we say we do not intend to give countenance to acquittals of criminals, frequent examples of which have been witnessed in modern times, based on the doctrine of moral or emotional insanity, unconnected with mental disease, which is not yet sufficiently supported by psychology, or recognized by law as an excuse for crime.—*Boswell's case*, *supra*; 1 Whar. Cr. Law, (9th Ed.), § 43.

In ancient times, lunatics were not regarded as "unfortunate sufferers from disease, but rather as subjects of demoniacal possession, or as self-made victims of evil passions." They were not cared for humanely in asylums and hospitals, but were incarcerated in jails, punished with chains and stripes, and often sentenced to death by burning or the gibbet. When put on their trial, the issue before the court then was not as now. If acquitted, they could only be turned loose on the community, to repeat their crimes without molestation or restraint. They could not be committed to

hospitals, as at the present day, to be kept in custody, cared for by medical attention, and often cured. It was not until the beginning of the present century, that the progress of Christian civilization asserted itself by the exposure of the then existing barbarities, and that the outcry of philanthropists, succeeded in eliciting an investigation of the British Parliament looking to their suppression. Up to that period the medical treatment of the insane is known to have been conducted upon a basis of ignorance, inhumanity, and empiricism.—*Amer. Cyclop.*, Vol. 9 (1874), *title* INSANITY. Being punished for wickedness, rather than treated for disease, this is not surprising. The exposure of these evils not only led to the establishment of that most beneficent of modern civilized charities—the Hospital and Asylum for the Insane—but also furnished hitherto unequalled opportunities to the medical profession, of investigating and treating insanity on the pathological basis, of its being a disease of the brain. Under these new and more favorable conditions the medical jurisprudence of insanity has assumed an entirely new phase. The nature and exciting causes of the disease, have been thoroughly studied and more fully comprehended. The result is that the “right and wrong test,” as it is sometimes called, which, it must be remembered, itself originated with the medical profession, in the mere dawn of the scientific knowledge of insanity, has been condemned by the great current of modern medical authorities, who believe it to be “founded on an ignorant and imperfect view of the disease.” *Encyc. Brit.* Vol. 15 (9th Ed.), *title*, INSANITY.

The question then presented seems to be, whether an old rule of legal responsibility shall be adhered to, based on theories of physicians promulgated a hundred years ago, which refuse to recognize any evidence of insanity, except the single test of mental capacity to distinguish right and wrong—or whether the courts will recognize as a possible fact, if capable of proof by clear and satisfactory testimony, the doctrine, now alleged by those of the medical profession who have made insanity a special subject of investigation, that the old test is wrong, and that there is no single test by which the existence of the disease, to that degree which exempts from punishment, can in every case be infallibly detected. The inquiry must not be unduly obstructed by the doctrine of *stare decisis*, for the life of the common law system and the hope of its permanency, consist largely in its power of adaptation to new scientific discoveries, and the requirements of an ever advancing civilization. There is inherent in it the vital principle of juridical evolution, which preserves itself by a constant struggle for approximation to the highest practical wisdom. It is not like the laws of Medes and Persians, which could not be changed. In establishing any new rule, we should strive, however, to have proper regard for two opposite aspects of the subject, lest, in the words of Lord Hale, “on one side, there be a kind of inhumanity towards the defects of human nature; or, on the other, too great indulgence to great crimes.”

It is everywhere admitted, and as to this there can be no doubt, that an idiot, lunatic, or other person of diseased brain, who is afflicted to such extent as not to know whether he is doing right or wrong, is not punishable for any act which he may do while in that state.

Can the courts justly say, however, that the only test or rule of responsi-

bility in criminal cases is the power to distinguish right from wrong, whether in the abstract, or as applied to the particular case? Or may there not be insane persons, of a diseased brain, who, while capable of perceiving the difference between right and wrong, are, as matter of fact, so far under *the duress of such disease* as to destroy *the power to choose* between right and wrong? Will the courts assume as a fact, not to be rebutted by any amount of evidence, or any new discoveries of medical science, that there is, and can be no such state of the mind, as that described by a writer on psychological medicine, as one "in which the reason has lost its empire over the passions, and the actions by which they are manifested, to such a degree, that the individual can neither repress the former, nor abstain from the latter?"—Dean's Med. Jur. 497.

Much confusion can be avoided in the discussion of this subject, by separating the duty of the jury from that of the court, in the trial of a case of this character. The province of the jury is to determine facts, that of the court to state the law. The rule in *McNaghten's case* arrogates to the courts in legal effect, the right to assert, as matter of law, the following propositions:

(1). That there is but a single test of the existence of that degree of insanity, such as confers irresponsibility for crime.

(2). That there does not exist any case of such insanity, in which that single test—the capacity to distinguish right from wrong—does not appear.

(3). That all other evidences of alleged insanity, supposed by physicians and experts, to indicate a destruction of the freedom of the human will, and the irresistible duress of one's actions, do not destroy his mental capacity to entertain a criminal intent.

The whole difficulty, as justly said by the Supreme Judicial Court of New Hampshire, is, that "courts have undertaken to declare that to be law which is *matter of fact*." "If," observes the same court, "the tests of insanity are matters of law, the practice of allowing experts to testify what they are should be discontinued; if they are matters of fact, the judge should no longer testify without being sworn as a witness, and showing himself to be qualified to testify as an expert.—*State v. Pike*, 49 N. H. 399.

We first consider what is *the proper legal rule of responsibility in criminal cases*.

No one can deny that there must be two constituent elements of legal responsibility in the commission of every crime, and no rule can be just and reasonable which fails to recognize either of them: (1). Capacity of intellectual discrimination; and (2). Freedom of will. Mr. Wharton, after recognizing this fundamental and obvious principle, observes: "If there be either incapacity to distinguish between right and wrong as to the particular act, or delusion as to the act, or inability to refrain from doing the act, there is no responsibility."—1 Whar. Cr. Law. (9th ed.), § 33. Says Mr. Bishop, in discussing this subject: "There cannot be, and there is not, in any locality or age, a law punishing men for what they cannot avoid."—1 Bish. Cr. Law. (7th ed.), § 383b.

If, therefore, it be true, as a matter of fact, that the disease of insanity can, in its action on the human brain, through a shattered nervous organization or in any other mode, so affect the mind as to subvert the freedom

of the will, and thereby destroy the power of the victim, *to choose* between the right and wrong, although he perceive it—by which we mean the power of volition to adhere in action to the right, and abstain from the wrong—is such a one criminally responsible, for an act done under the influence of such controlling disease? We clearly think not, and such, we believe to be the just, reasonable and humane rule, towards which all the modern authorities in this country, legislation in England, and the laws of other civilized countries of the world, are gradually, but surely tending, as we shall further on attempt more fully to show.

We next consider the question as to the *probable existence of such a disease*, and the *test of its presence* in a given case.

It will not do for the courts to dogmatically deny, the possible existence of such a disease, or its pathological and psychical effects, because this is a matter of evidence, not of law, or judicial cognizance. Its existence, and effect on the mind and conduct of the patient, is a question of fact to be proved, just as much as the possible existence of cholera or yellow fever formerly was, before these diseases became the subjects of common knowledge, or the effects of delirium from fever, or intoxication from opium and alcoholic stimulants would be. The courts could, with just as much propriety, years ago, have denied the existence of the Copernican system of the universe, the efficacy of steam and electricity as a motive power, or the possibility of communication in a few moments between the continents of Europe and America by the magnetic telegraph, or that of the instantaneous transmission of the human voice, from one distant city to another by the use of the telephone. These are scientific facts, first discovered by experts, before becoming matters of common knowledge. So, in like manner, must be every other unknown scientific fact, in whatever profession or department of knowledge. The existence of such a cerebral disease, as that which we have described, is earnestly alleged by the superintendents of insane hospitals, and other experts, who constantly have experimental dealings with the insane, and they are permitted every day to so testify before juries. The truth of their testimony, or what is the same thing, the existence or non-existence of such a disease of the mind—by which we of course mean, disease of the *brain* affecting the mind—in each particular case, is necessarily a matter for the determination of the jury from the evidence.

So it is equally obvious that the courts can not, upon any sound principle, undertake to say, what are the invariable or infallible tests of such disease. The attempt has been repeatedly made, and has proved a confessed failure in practice. “Such a test,” says Mr. Bishop, “has never been found, not because those who have searched for it have not been able and diligent, but because it does not exist.”—1 Bish. Cr. Law. (7th ed.), § 381. In this conclusion, Dr. Ray, in his learned work on the Medical Jurisprudence of Insanity, fully concurs. Ray’s Med. Jur. Ins., p. 39. The symptoms and causes of insanity are so variable, and its pathology so complex, that no two cases may be just alike. “The fact of its existence,” says Dr. Ray, “is never established by any single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case.”—Ray’s Med. Jur. of Ins. § 24. Its exciting causes being moral, psychical, and

physical, are the especial subject of specialists' study. What effect may be exerted on the given patient by age, sex, occupation, the seasons, personal surroundings, hereditary transmission, and other causes, is the subject of evidence based on investigation, diagnosis, observation, and experiment. Peculiar opportunities, never before enjoyed in the history of our race, are offered in the present age for the ascertainment of these facts, by the establishment of asylums for the custody and treatment of the insane, which Christian benevolence and statesmanship have substituted for jails and gibbets. The testimony of these experts—differ as they may in many doubtful cases—would seem to be, the best which can be obtained, however unsatisfactory it may be in some respects.

In the present state of our law, under the rule in *McNaghten's case*, we are confronted with this practical difficulty, which itself demonstrates the defect of the rule. The courts in effect charge the juries, as matter of law, that no mental disease exists, as that often testified to by medical writers, superintendents of insane hospitals, and other experts—that there can be as a matter of scientific fact no cerebral defect, congenital or acquired, which destroys the patient's power of self-control—his liberty of will and action—provided only he retains a mental consciousness of right and wrong. The experts are immediately put under oath, and tell the juries just the contrary as matter of evidence; asserting that no one of ordinary intelligence can spend an hour in the wards of an insane asylum, without discovering such cases, and in fact that “the whole management of such asylums presupposes a knowledge of right and wrong on the part of their inmates.”—Guy & F. on Forensic Med. 220. The result in practice, we repeat, is that the courts charge one way, and the jury, following an alleged higher law of humanity, find another, in harmony with the evidence.

In Bucknill or Criminal Lunacy, p. 59, it is asserted as “the result of observation and experience, that in all lunatics, and the most degraded idiots, whenever manifestation of any mental action can be educed, the feeling of right and wrong may be proved to exist.”

“With regard to this test,” says Dr. Russell Reynolds, in his work on “The Scientific Value of the Legal Tests of Insanity,” p. 34 (London, 1872), “I may say, and most emphatically, that it is utterly untrustworthy, because untrue to the obvious facts of Nature.”

In the learned treatise of Drs. Bucknill and Tuke on “Psychological Medicine,” p. 269 (4th ed. London, 1879), the legal tests of responsibility are discussed, and the adherence of the courts to the right and wrong test is deplored as unfortunate, the true principle being stated to be “whether, in consequence of congenital defect or acquired disease, the power of self-control is absent altogether, or is so far wanting as to render the individual irresponsible.” It is observed by the authors: “As has again and again been shown, the unconsciousness of right and wrong is one thing, and the powerlessness through cerebral defect or disease to do right is another. To confound them in an asylum would have the effect of transferring a considerable number of the inmates thence to the treadmill or the gallows.”

Dr. Peter Bryce, Superintendent of the Alabama Insane Hospital for more than a quarter of a century past, alluding to the moral and disciplinar

treatment to which the insane inmates are subjected, observes : " They are dealt with in this institution, as far as it is practicable to do so, as rational beings ; and it seldom happens that we meet with an insane person who cannot be made to discern, to some feeble extent, his duties to himself and others, and his true relations to society." Sixteenth Annual Rep. Ala. Insane Hosp. (1876), p. 22 ; Biennial Rep. (1886), pp. 12-18.

Other distinguished writers on the medical jurisprudence of insanity have expressed like views, with comparative unanimity. And no where do we find the rule more emphatically condemned, than by those who have the practical care and treatment of the insane, in the various lunatic asylums of every civilized country. A notable instance is found in the following resolution unanimously passed at the annual meeting of the British Association of medical-officers of Asylums and Hospitals for the Insane, held in London, July 14 1864, where there were present fifty-four medical officers:

Resolved, That so much of the legal test of the mental condition of an alleged criminal lunatic, as renders him a responsible agent, because he knows the difference between right and wrong, is inconsistent with the fact, well known to every member of this meeting, that the power of distinguishing between right and wrong, exists very frequently in those who are undoubtedly insane, and is often associated with dangerous and uncontrollable delusions." Judicial Aspects of Ins. (Ordranax, 1877), 423-424.

These testimonials as to a scientific fact, are recognized by intelligent men in the affairs of every day business, and are constantly acted on by juries. They cannot be silently ignored by judges. Whether established or not, there is certainly respectable evidence tending to establish it, and this is all the courts can require.

Nor are the modern law writers silent, in their disapproval of the alleged test under discussion. It meets with the criticism or condemnation of the most respectable and advanced in thought among them, the tendency being to incorporate in the legal rule of responsibility " not only the *knowledge* of good and evil, but the *power to choose* the one, and refrain from the other." Browne's Med. Jur. of Insanity. §§ 13 et seq., § 18 ; Ray's Med. Jur., §§ 16-19 ; Whart. & Stiles' Med. Jur. § 59 ; 1 Whart. Cr. Law (9th ed.), §§ 33, 43, 45 ; 1 Bish. Cr. Law (7th ed.), § 386 et seq. ; Judicial Aspects of Insanity (Ordranax), 419 ; 1 Greenl. Ev. § 372 ; 1 Steph. Hist. Cr. Law, § 168 ; Amer. Law. Rev. Vol. 4 (1869-70), 236 et seq.

The following practicable suggestion is made in the able treatise of Bal-four Browne above alluded to : " In case of alleged insanity, then," he says, " if the individual suffering from enfeeblement of intellect, delusion, or any other form of mental aberration, was looked upon as, to the extent of this delusion, under the influence of duress (the dire duress of disease), and in so far *incapacitated to choose* the good and eschew the evil, in so far, it seems to us," he continues, " would the requirements of law be fulfilled ; and in that way it would afford an opening, by the evidence of experts, for the proof of the amount of self-duress in each individual case, and thus alone can the criterion of law and the criterion of the inductive science of medical psychology be made to coincide." Med. Jur. of Ins. (Browne), § 18.

This, in our judgment, is the practical solution of the difficulty before us, as it preserves to the courts and juries, respectively, a harmonious field for the full assertion of their time honored functions.

So great, it may be added, are the embarrassments growing out of the old rule, as expounded by the judges in the House of English Lords, that, in March, 1874, a bill was brought before the House of Commons, supposed to have been drafted by the learned counsel for the Queen, Mr. Fitzjames Stephen, which introduced into the old rule, the new element of an absence of the power of self-control, produced by diseases affecting the mind, and this proposed alteration of the law was cordially recommended by the late Chief Justice Cockburn, his only objection being that the principle was proposed to be limited to the case of homicide.—1 Whart. Cr. Law (9th ed.), § 45, p. 66, *note* 1; Browne's Med. Jur. of Ins., § 10, *note* 1.

There are many well considered cases which support these views.

In the famous case of *Hadfield*, 27 How. St. Tr. 1282, s. c. 2 Lawson's Cr. Def. 201-215, who was indicted and tried for shooting the King, and who was defended by Mr. Erskine in an argument most able and eloquent, it clearly appeared that the accused understood the difference between right and wrong as applied to the particular act. Yet he labored under the delusion, that he had constant intercourse with the Divine Creator; that the world was coming to an end, and that, like Christ, he must be sacrificed for its salvation. He was so much under the duress of the delusion that he "must be destroyed, but ought not to destroy himself," that he committed the act for the specific purpose of being arrested and executed. He was acquitted on being tried before Lord Kenyon, and, no one ever doubted, justly so.

The case of *United States v. Lawrence*, 4 Cr. C. C. Rep. 518, tried in 1835, presented another instance of delusion, the prisoner supposing himself to be the King of England and of the United States, as an appendage of England, and that General Jackson, then President, stood in his way in the enjoyment of the right. Acting under the duress of this delusion, the accused assaulted the President by attempting to shoot him with a pistol. He was, in five minutes, acquitted by the jury on the ground of insanity.

The case of the *United States v. Guiteau*, 10 Fed. Rep. 161, s. c., 2 Lawson's Cr. Def., 162, is still fresh in cotemporary recollection, and a mention of it can scarcely be omitted in the discussion of the subject of insanity. The accused was tried, sentenced, and executed for the assassination of James A. Garfield, then President of the United States, which occurred in July, 1881. The accused himself testified that he was impelled to commit the act of killing by inspiration from the Almighty, in order, as he declared, "to unite the two factions of the Republican party, and thereby save the government from going into the hands of the ex-rebels and their Northern allies." There was evidence of various symptoms of mental unsoundness, and some evidence tending to prove such an alleged delusion, but there was also evidence to the contrary, strongly supported by the most distinguished experts, and looking to the conclusion, that the accused entertained no such delusion, but that, being a very eccentric and immoral man, he acted from moral obliquity, the morbid love of notoriety, and with the expressed hope that the faction of the Republican party, in whose interest he professed to act, would intervene to protect him. The case was tried before the United States District Court, for the District of Columbia, before Mr. Justice Cox, whose charge to the jury is replete with interest and learning.

While he adopted the right and wrong test of insanity, he yet recognized the principle, that, if the accused in fact entertained an insane delusion, which was the product of the disease of insanity, and not of a malicious heart and vicious nature, and acted solely under the influence of such delusion, he could not be charged with entertaining a criminal intent. An insane delusion was defined to be "an unreasoning and incorrigible belief in the existence of facts, which are either impossible absolutely, or impossible under the circumstances of the individual," and no doubt the case was largely determined, by the application of this definition by the jury. It must ever be a mere matter of speculation, what influence may have been exerted upon them by the high personal and political significance of the deceased, as the Chief Magistrate of the Government, or other peculiar surroundings of a partisan nature. The case in its facts is so peculiar, as scarcely to serve the purpose of a useful precedent in the future.

We note other adjudged cases, in this country, which support the modern rule for which we here contend, including one decided in England as far back as 1840, often referred to by the text writers. In *Rex v. Oxford*, 2 C. & P., 225, Lord Denman clearly had in mind this principle, when, after observing that one may commit a crime and not be responsible, he used this significant language: "If some *controlling disease* was in truth *the acting power within him*, which he could not resist, then he will not be responsible." The accused in that case acted under the duress of a delusion of an insane character.

In *State v. Felter*, 35 Iowa, 68, the capacity to distinguish between right and wrong was held not to be a safe test of criminal responsibility in all cases, and it was accordingly decided, that, if a person commit a homicide, knowing it to be wrong, but do so under the influence of an uncontrollable and irresistible impulse, arising not from natural passion, but from an insane condition of the mind, he is not criminally responsible. "If," said Chief Justice Dillon, "by the observation and concurrent testimony or medical men who make the study of insanity a specialty, it shall be definitely established to be true, that there is an unsound condition of the mind, that is, a diseased condition of the mind, in which, though a person abstractly knows that a given act is wrong, he is yet, by an *insane impulse*, that is, an impulse proceeding from a diseased intellect, irresistibly driven to commit it—the law must modify its ancient doctrines and recognize the truth, and give to this condition, when it is satisfactorily shown to exist, its exculpatory effect."

In *Hopps v. People*, 31 Ill. 385, which was an indictment for murder, the same rule was recognized in different words. It was there held, that if, at the time of the killing, the defendant was not of sound mind, but affected with insanity, and such disease was the *efficient cause* of the act, operating to create an uncontrollable impulse, so as to deprive the accused of the power of volition in the matter, and he would not have done the act but for the existence of such condition of mind, he ought to be acquitted.

In *Bradly v. State*, 31 Ind. 492, a like modification of the old rule was announced, the court observing: "Men under the influence of disease, may know the right, and yet be powerless to resist the wrong. The well known exhibition of cunning, by persons admitted to be insane, in the perpetration.

of an illegal act, would seem to indicate comprehension of its evil nature and legal consequences, and yet the power of self-control being lost from disease, there can be no legal responsibility."

In *Harris v. State*, 18 Tex. Ct. App. 287, s. c. 5 Amer. Cr. Rep. (Gibbons), 357, this rule was applied to the disease known as kleptomania, which was defined as a species of insanity, producing an uncontrollable propensity to steal, and it was held, if clearly established by the evidence, to constitute a complete defense in a trial for theft.

The State v. Pike, 49 N. H. 399, was an indictment for murder, to which the plea of insanity was set up as a defense. It was held to be a question of fact for the jury to determine; (1), whether there was such a mental disease as dipsomania, which is an irresistible craving for alcoholic liquors, and (2), whether the act of killing was the product of such disease. One of the most instructive discussions on the law of insanity, which can be found in legal literature, is the learned opinion of Mr. Justice Doe in that case.—Lawson on Insanity, p. 311-312; 2 Lawson's Cr. Def. 311 *et seq.*

This ruling was followed by the same court in *State v. Jones*, 50 N. H. 369, s. c., 9 Amer. Rep. 242, which was an indictment charging the defendant with murdering his wife. The evidence tended to show that the defendant was insane, and killed her under the delusive belief, that she had been guilty of adultery with one French. The rule in *McNaghten's case*, was entirely repudiated, both on the subject of the right and wrong test, and that of delusions, and it was held that the defendant should be acquitted, if he was at the time afflicted with a disease of the mind of such character as to take away the capacity to entertain a criminal intent, and that there could be no criminal intent imputed, if, as a matter of fact, the evidence showed that the killing was the offspring or product of such disease.

Numerous other cases could be cited bearing on this particular phase of the law, and supporting the above views with more or less clearness or statement. That some of these cases adopt the extreme view, and recognize moral insanity as a defense to crime, and others adopt a measure of proof for the establishment of insanity more liberal to the defendant than our own rule, can neither lessen their weight as authority, nor destroy the force of their logic. Many of them go further on each of these points than this court has done, and are, therefore, stronger authorities than they would otherwise be in support of our views.—*Kriel v. Com.* 5 Bush. (Ky.), 362; *Smith v. Com.*, 1 Duv. (Ky.), 224; *Dejarnette v. Com.*, 75 Va., 867; *Coyle v. Com.*, 100 Penn. St., 573; *Cunningham v. State*, 56 Miss., 269; *Com. v. Rogers*, 7 Metc., 500; *State v. Johnson*, 40 Conn., 136; *Anderson v. State*, 43 Conn., 514, 525; Buswell on Ins., § 439 *et seq.*; *State v. McWhorter*, 46 Iowa, 88.

The law of Scotland is in accord with the English law on this subject, as might well be expected. The criminal Code of Germany, however, contains the following provision, which is said to have been the formulated result of a very able discussion both by the physicians and lawyers of that country. "There is no criminal act, when the actor at the time of the offense is in a state of unconsciousness or morbid disturbance of the mind, through which the free determination of his will is excluded."—Encyc. Brit. (9th ed.), Vol. 9, p. 112; citing Crim. Code of Germany (§ 51, R. G. B.).

The Code of France provides : "There can be no crime or offense if the accused was in a state of *madness* at the time of the act." For some time the French tribunals were inclined to interpret this law in such a manner as to follow in substance the law of England. But that construction has been abandoned, and the modern view of the medical profession, is now adopted in that country.

It is no satisfactory objection to say that the rule above announced by us is of difficult application. The rule in *McNaghten's case*, *supra*, is equally obnoxious to a like criticism. The difficulty does not lie in the rule, but is inherent in the subject of insanity itself ; the practical trouble is for the courts to determine in what particular cases the party on trial is to be transferred, from the category of sane to that of insane criminals—where, in other words, the border line of punishability is adjudged to be passed. But, as has been said in reference to an every day fact of nature, no one can say where twilight ends or begins, but there is ample distinction, nevertheless, between *day* and *night*. We think we can safely rely in this matter upon the intelligence of our juries, guided by the testimony of men, who have practically made a study of the disease of insanity ; and enlightened by a conscientious desire, on the one hand, to enforce the criminal laws of the land, and on the other, not to deal harshly with any unfortunate victim of a diseased brain, acting without the light of reason, or the power of volition.

Several rulings of the court, including especially the one given *ex mero motu*, and the one numbered five, were in conflict with this view, and for these errors the judgment must be reversed. The charges requested by defendant were all objectionable on various grounds. Some of them were imperfect statements of the rules above announced ; some were argumentative, and others were misleading, by reason of ignoring one or more of the essentials of criminal irresponsibility as explained in the foregoing opinion.

It is almost needless to add that where one does not act under the duress of a diseased brain, or insane delusion, but from motives of anger, revenge or other passion, he can not claim to be shielded from punishment for crime, on the ground of insanity. Insanity proper, is more or less a mental derangement, coexisting often, it is true, with a disturbance of the emotions, affections and other moral powers. A mere moral or emotional insanity, so-called, unconnected with disease of the brain, or irresistible impulse resulting from mere moral obliquity, or wicked propensities and habits, is not recognized as a defense to crime in our courts.—1 Whar, Cr. Law (9th ed.), § 46 ; *Boswell v. State*, 63 Ala. 307, 35 Amer. Rep. 20 ; *Ford v. State*, 71 Ala., 385.

The charges refused by the court raise the question as to how far one acting under the influence of an insane delusion, is to be exempted from criminal accountability. The evidence tended to show, that one of the defendants, Mrs. Nancy J. Parsons, acted under the influence of an insane delusion, that the deceased, whom she assisted in killing, possessed supernatural power, to afflict her with disease and take her life by some "supernatural trick;" that by means of such power the deceased had caused defendant to be in bad health for a long time, and that she acted under the belief, that she was in great danger of the loss of her life, from the conduct of deceased, operating by means of such supernatural power.

The rule in *McNaghten's case*, as decided by the English judges, and supposed to have been adopted by this court, is that the defense of insane delusion, can be allowed to prevail in a criminal case, only when the imaginary state of facts would, if real, justify or excuse the act; or, in the language of the English judges themselves, the defendant "must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real."—*Boswell's case*, 63 Ala. 307. It is apparent from what we have said, that this rule cannot be correct as applied to all cases of this nature, even limiting it as done by the English judges, to cases where one "labors under partial delusion, and is not in other respects insane."—*McNaghten's case*, 10 Cl. & P. 200; s. c., 2 Lawson's Cr. Def. 150. It holds a partially insane person as responsible as if he were entirely sane, and it ignores the possibility of crime being committed, under the duress of an insane delusion operating upon a human mind, the integrity of which is destroyed or impaired by disease, except perhaps, in cases where the imaginary state of facts, if real, would excuse or justify the act done under their influence.—Field's Med. Leg. Guide, 101-104; Guy & F. on Forensic Med. 220. If the rule declared by the English judges be correct, it necessarily follows, that the only possible instance of excusable homicide, in cases of delusional insanity would be, where the delusion, if real, would have been such, as to create, in the mind of a reasonable man, a just apprehension of imminent peril to life or limb. The personal fear or timid cowardice of the insane man, although created by disease acting through a prostrated nervous organization, would not excuse undue precipitation of action on his part. Nothing would justify assailing his supposed adversary, except an overt act, or demonstration on the part of the latter, such as, if the imaginary facts were real, would under like circumstances, have justified a man perfectly sane in shooting or killing. If he dare fail to reason, on the supposed facts embodied in the delusion, as perfectly as a sane man could do on a like state of realities, he receives no mercy at the hands of the law. It exacts of him the last pound of flesh. It would follow also, under this rule, that the partially insane man, afflicted with delusions, would no more be excusable than a sane man would be, if, perchance, it was by his fault the difficulty was provoked, whether by word or deed; or, if, in fine, he may have been so negligent, as not to have declined combat when he could do so safely, without increasing his peril of life or limb. If this has been the law heretofore, it is time it should be so no longer. It is not only opposed to the known facts of modern medical science, but is a hard and unjust rule to be applied, to the unfortunate and providential victims of disease. It seem to be little less than inhumane, and its strict enforcement would probably transfer a large percentage of the inmates of our Insane Hospital, from that institution to hard labor in the mines, or the penitentiary. Its fallacy consists in the assumption, that no other phase or delusion, proceeding from a diseased brain, can so destroy the volition of an insane person as to render him powerless to do, what he knows to be right, or to avoid doing what he may know to be wrong. This inquiry, as we have said, and here repeat, is a question of fact for the determination of the jury in each particular case. It is not a matter of law to be decided by the courts. We think it sufficient if the insane delusion—by which we mean the delusion

proceeding from a *diseased brain* affecting the mind—sincerely exists at the time of committing the alleged crime, and the defendant believing it to be real, is so influenced by it, as either to render him incapable of perceiving the true nature and quality of the act done, by reason of the depravation of the reasoning faculty, or so subverts his will, as to destroy his free agency by rendering him powerless to resist by reason of *the duress of the disease*. In such a case, in other words, there must exist either one or two conditions : (1), Such mental defect as to render the defendant unable to distinguish between right and wrong in relation to the particular act ; or 2), the overmastering of defendant's will in consequence of the insane delusion under the influence of which he acts, produced by disease of the mind or brain.—*Rex v. Hadfield*, 37 How. St. Tr. 1282, s. c., 2. Lawson's Cr. Def. 201 ; *Roberts v. State*, 3 Ga. 310 ; *Com. v. Rogers*, 7 Metc. 500 ; *State v. Windsor*, 5 Harr. 512 ; Buswell on Insanity §§ 434 and 440 ; Amer. Law Review, Vol. 4 (1869-70) pp. 236-252.

In conclusion of this branch of the subject, that we may not be misunderstood, we think it follows very clearly from what we have said, that the inquiries to be submitted to the jury then, in every criminal trial where the defence of insanity is interposed, are these :

1. Was the defendant at the time of the commission of the alleged crime, as matter of fact, afflicted with a *disease of the brain affecting the mind*, so as to be either idiotic, or otherwise insane ?

2. If such be the case, did he know right from wrong as applied to the particular act in question ? If he did not have such knowledge, he is not legally responsible.

3. If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions concur :

(1.) If, by reason of the duress of such mental disease, he had so far lost the *power to choose* between the right and the wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed.

(2.) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it *solely*.

The rule announced in *Boswell's case*, 63 Ala. 308 *supra*, as stated in the fourth head note, is in conflict with the forgoing conclusions, and to that extent is declared incorrect, and is not supported by the opinion in that case otherwise than by *dictum*.

We adhere, however, to the rule declared by this court, in *Boswell's case*, *supra*, and followed in *Ford's case*, 71 Ala. 385, holding, that when insanity is set up as a defence in a criminal case, it must be established to the satisfaction of the jury, by a preponderance of the evidence ; and a reasonable doubt of the defendant's sanity, raised by all the evidence, does not authorize an acquittal.

There was no error in overruling the objection taken by the defendants to the copy of the venire, or list of jurors, served on them. The act approved February 17, 1885, (Acts 1884-85, pp. 181, 185, Sec. 10), regulating the organization of juries, applies to this case, and provides that "the names of the jurors *so drawn*," in accordance with section 10 of the act, together with the panel, of thirty-six jurors provided for by section 9,

“shall constitute *the venire*,” from which the jurors to try capital cases shall be selected.—Acts 1884–85, pp. 185–186. The rule on this subject declared in *Posey's case*, 73 Ala. 490, and *Shelton's case*, *Id.* 5, has no application under this act. These cases construe section 4872 of the Code, which contains different language from the law here construed.

Under the rule announced in *Ford v. State*, 71 Ala., 385, 397, and authorities there cited, there was no error in excluding the proposed statement of Mrs. Nail. This testimony was defective, in not being preceded more fully by the facts and circumstances, upon which the opinion of the witness as to the sanity of the accused was predicated, the witness not being an expert.—Rogers on Expert Test., § 61.

The other rulings of the court need not be considered by us.

The judgment is reversed and the cause remanded. In the meanwhile the prisoners will be held in custody until discharged by due process of law.

STONE, C. J., dissents, in part, and expresses his own views in a separate opinion.

Through the courtesy of Judge Montgomery, one of the judges of the Supreme Court, of the District of Columbia and also member of the Medico-Legal Society, I am enabled to furnish a brief resume of the case of John Daley, recently tried there, with a copy of that judge's charge to the jury.

PEOPLE vs. DALEY—SUPREME COURT, WASHINGTON, D. C.,
RESUME OF THE CASE.

MONTGOMERY, JUDGE

About five o'clock in the afternoon of the 13th of July 1887, Joseph C. G. Kennedy, an old and respected citizen of Washington, left his real-estate office, near N. W. corner of Fifteenth street and New York Avenue, N. W., went diagonally across Fifteenth street to the N. E. corner of these two streets, and there deposited in a P. O. Box, some mail. He immediately turned around and started to retrace his steps.

At this instant a man slapped him on the back with his hand. Kennedy turned around almost involuntary, and that instant, as he faced this man, he was stabbed with a long-bladed shoe knife, which almost literally disemboweled him.

He sunk to the pavement crying for help, and in three minutes he was dead. The crowd collected rapidly, and as they began to gather the man walked coolly away.

Some one in the crowd walked up, took hold of him, and demanded to know, why he struck the blow. He replied, in substance, that they would see in due time.

Of course, he was arrested and indicted. He proved to be one, John Daley, who, with his father before him, was an old citizen of Washington.

The father had been dead for several years, and the son (the defendant), had been to some extent a wanderer, and a vagabond.

He had spent one or more seasons in the almshouse, and had only been discharged therefrom the day next preceding the homicide.

When arraigned, he had no counsel, and no means with which to employ legal assistance. The Court assigned for his defense, Thos. N. Miller and Howard Claygett, Esq.

On the 3d day of January, 1888, the case was called for trial.

After considerable trouble, a jury was secured, and the following day the trial began. A. S. Worthington, Esq., District Attorney, assisted by A. A. Lipscomb, Esq., one of his assistants, conducted the prosecution.

The case was conducted with much skill and ability on both sides.

The defense relied entirely, on the alleged mental incompetency of the defendant.

On the trial it appeared that, many years before, he had voluntarily gone to live, at some Catholic Institution at or near Philadelphia.

That he took with him all his savings, amounting to a few hundred dollars.

That he remained there, serving in some humble capacity for several years, when he voluntarily left, and that ever since he had, on occasions, and whenever he had an auditor, told that the "brotherhood" had poisoned and tried to rob him, and that he suffered constantly from the effects of this poison. This was agreed on all hands, to be an hallucination and nothing else.

It also appeared, that the father of the defendant, years ago, had had dealings with Mr. Kennedy, and that since his death the son made claim, that the father had been cheated, or that something was due him at his death, which Mr. Kennedy failed or refused to pay to the defendant. It was further shown that, some months before the killing, the defendant met on the streets old Mr. Elliott, and assaulted him. When arrested and interrogated, his excuse was that he, Elliott, looked like one of the "Catholic brotherhood."

Doctors Godding and Chapin, who had examined defendant, at the request of the public prosecutors, testified that he was undoubtedly laboring under hallucinations, and explained fully the effects of such hallucinations.

The trial was finished and given to the jury, on the 12th day of January.

The following is the charge of the trial judge to the jury :

UNITED STATES SUPREME COURT, DISTRICT OF COLUMBIA.

PEOPLE VS. DALEY, MONTGOMERY, J.

Gentlemen of the Jury :

The defendant, John Daley, stands charged with the murder of Joseph C. G. Kennedy. The indictment alleges that the crime was committed on the 13th day of July, 1887.

The law, in its wisdom and humanity, provides for and demands in behalf of every man who may be charged with a violation of its criminal provisions, a fair and impartial trial, by a jury of his coun-

trymen, and this species of trial is declared to have "ever been looked upon as the glory of the English law," and "ever esteemed in all countries a privilege of the highest and 'most beneficial Nature.'" It is in obedience to this demand of the law, that you have been called here from your respective avocations, impanelled and sworn "well and truly to try" this most important case.

At the outset I feel impelled to especially enjoin upon you, the imperative duty which you owe to the government and to the defendant respectively, of giving this case, all its circumstances, and all the testimony, a careful, thorough, and exhaustive examination. When you get the case and retire to your room for consultation, all the testimony which has been given on the trial should be carefully and conscientiously examined, scrutinized, and weighed before you shall attempt to reach a final conclusion.

I think it well also to remind you here and now, of a fact which should constantly be borne in mind by you during your deliberations and it is this: the law imposes in cases of this character duties equally grave and equally responsible upon the Court and upon the jury, respectively. These duties, however, are wholly different ones. It is the province of the court to admit for the consideration of the jury all proper, competent legal evidence which may be offered. It is also the province and duty of the court to finally, as I am now attempting to do, instruct the jury in relation to the law, which should govern their deliberations and their determinations of the facts. With *this*, the important duties of the Court, so far as the trial is concerned, ceases, and the pre-eminently important duty of the jury begins.

The Court has no right, and has no desire to trespass upon the domain which belongs exclusively to you. The jury are the sole, only, and responsible judges of the facts, and upon these facts the Court must not have, and has not, any opinion to express or intimate.

The jury should receive and regard the instructions which the Court gives them concerning the law, but when they come to a consideration of the facts, and when they come to determine the truth in the light of these instructions, and of the evidence which has been given in open Court their prerogative is absolute.

You will see, therefore, gentlemen of the jury, that upon you in this case rests a very grave and very serious responsibility. I enjoin upon you that it be fairly met, and that your duty be discharged, no matter what result you may reach. After a careful, thorough, and conscientious deliberation your verdict should be fearlessly and honestly pronounced. You stand charged with a solemn responsibility to the government and to the defendant, respectively. If within the instructions, which I shall hereafter give you, you shall reach the conclusion that the defendant is guilty of the crime laid to his charge, you will meet your responsibility and pronounce your verdict without hesitation. If, on the other hand, after an exhaustive examination shall have been made, you shall be of the opinion that the charge

has not been established to your satisfaction, beyond the reasonable and rational doubt, to which I shall hereafter advert, you will as fearlessly and promptly acquit the defendant. I remind you here that in all criminal trials, the prosecution must prove the truth of the charge alleged against the defendant.

At the outset, and when the trial begins, the law presumes the defendant to be innocent, and the burden of overcoming this presumption by proof rests upon the prosecution. The government, the prosecution, must not only establish the case, which they present for your consideration, by a preponderance of proof, but you should, after looking over the entire case and all the testimony on both sides, and after a careful examination of all of it, reach the conclusion beyond a reasonable doubt, that the defendant is guilty, or he should be acquitted.

I mean to say that in this case, if the jury should, after a careful consideration of the testimony, and of all the facts and circumstances involved in and surrounding it, still entertain a reasonable, rational doubt, such a doubt as would deter the juror from embarking in an important enterprise, which he may contemplate in his own behalf, such doubt would entitle the defendant to acquittal.

The term "reasonable doubt", as applied to this class of cases, is not very difficult to understand. Every intelligent man will understand at once what is meant, when told that a conclusion should not be acted upon, unless he has reached that belief beyond a reasonable doubt. It is said to be "a fair doubt" growing out of the testimony in the case. It is not a mere imaginary capricious, or a possible doubt, but a fair doubt based upon reason and common sense. It is such a doubt as may leave your minds, after a careful examination of all the evidence in the case, in that condition that you cannot say that you have an abiding conviction to a moral certainty, of the truth of the charge", (proof to a moral certainty as distinguished from absolute certainty.)

And now, gentlemen, having said thus much in advance of the time and order in which such instructions are perhaps usually given, I proceed to present for your consideration what I have to say about *this case*. You have already been reminded that the defendant stands charged with the murder of Joseph C. G. Kennedy. On the part of the prosecution it is claimed that the defendant, during a considerable portion of the afternoon of the 13th day of July last, was lurking about or in the vicinity of the place where 15th Street, Northwest, intersects New York Avenue in this city; that he was, in fact, lying in wait for the deceased with the intent to take his life, when he should encounter him and get the opportunity. It is further claimed by the prosecution that Mr. Kennedy left his office, which is said to be situated on the west side of 15th Street, and near the corner of New York Avenue, and proceeded to the northeast corner of these two streets, where he deposited in a letter box at that point some

mail; and as he turned to retrace his steps or cross the street the defendant approached, followed behind, and overtook him; that he touched him on the shoulder, or on the back with his hand; that at the touch, Mr. Kennedy turned around, when defendant instantly struck him a blow, or stabbed him, with the knife which has been exhibited here, inflicting a serious and mortal wound, from which he expired on the spot where he was struck, and in a very few minutes thereafter. This is substantially the claim on the part of the prosecution. I do not understand that the fact of the homicide, the fact that Mr. Kennedy met his death at the hands of the defendant at the time and place, as claimed by the prosecution, is denied or disputed on the part of the defense. It is claimed, however, that the defendant was not waiting or watching for Mr. Kennedy, but that he was lying in wait for Dr. Elliott, if for anybody, with whom he had had a previous encounter. It is also urged on the part of the defense that the defendant was at that time in such a mental condition as to be legally irresponsible, criminally, for his acts. Or, in other words, that he was then, and that, indeed, he still is, an insane man. And here I advise you, as I have been requested by counsel for the defendant, that the question of insanity when interposed in a criminal case as a defense is entitled to be considered, and should be determined, with the same conscientious care and entire impartiality as any other legitimate defense.

I do not regard it necessary to attempt to explain to the jury the various instances in which the fact of mental irresponsibility in one or the other of its various conditions may or should excuse a person charged with crime from the consequences of a criminal act. Indeed, I have little doubt that such an attempt would serve rather to confuse than enlighten the jury in this case. I shall therefore confine myself to an attempt to explain to the jury so much of the law relating to this question of mental irresponsibility, in its relation to defenses in cases of charges of murder, as may be applicable to this case and no more.

You will remember, gentleman, that the defendant stands charged with the crime of murder. This crime is defined to be "the unlawful killing of a reasonable creature in being (a human being) by a person of sound mind and discretion, with malice aforethought." If, therefore, in this case, the homicide, the fact of the killing, has been established to your satisfaction; that the deceased was killed by the defendant, that he stabbed him purposely and deliberately with the knife, as claimed, and with the intent to take his life; and that the blow, the stab inflicted upon the deceased, did result in his death, *then prima facie*, (presumptively) the case, the charge of murder is made out, and you should turn your attention to the defense.

It may be improper for me to again say here that I do not understand that any of these facts, to which your attention has just been invited, are controverted or disputed. At the threshold of this ques-

tion, I advise you that *prima facie*, in the absence of any proof to the contrary, the law presumes every person of sound mind. So presuming, as a matter of course, where an act of this kind, committed in *this* manner, is established, the case of the government is *prima facie* made out, and it rests with the defense, if insanity or mental irresponsibility be asserted, to offer proof upon this subject. That is to say, had this case stopped, had the proof closed when the government rested its case with no fact proven, except the time, place, and manner of the killing, then the defendant in the absence of any proof on the subject must have been presumed sane (of sound mind), and must have been held responsible for what he did. This being the law, it hardly needs be said that it follows logically and naturally that where the defense rests, in whole or in part, upon the alleged fact, that the defendant is not mentally responsible, then the onus, the burden rests on the defense, of first offering proof on this subject (of mental capacity) and to show that the defendant was mentally irresponsible, or at least that there is a grave, serious, reasonable doubt upon the subject. When they, the defense have done *this*, when they have fairly shown *prima facie* that the defendant's mental condition was such as to render him criminally irresponsible, then the onus, the burden shifts upon the prosecution, and it is then for it, the prosecution to show that the mental irresponsibility, the mental affliction did *not* exist, or that if it did, it was not of such character or degree as would render him, the defendant, irresponsible criminally.

In pursuance of this practice, the prosecution made and rested its *prima facie* case.

The defense then offered their evidence, and amongst it their proof on the subject of mental capacity.

Thereupon the prosecution properly attempted to show in rebuttal, what were the actual facts as regards this most important question from their standpoint.

The case has been exceptionally well prepared, and it has been presented on both sides with unusual clearness and ability. From the beginning, you gentlemen have given careful and patient attention to the testimony, and the important questions of fact to which the evidence has been addressed is now for your solution, aided so far as may be possible, by the instructions which the court is able to give you concerning the law applicable to them.

At this point I advise you, that the actual mental condition of the defendant at the time of the homicide is, so far as it is involved in this case, a *fact* to be submitted to and ascertained by the jury from the evidence in the case. "The state and condition of mind of the defendant is proved, like other facts, to the jury."

I do not understand that it is claimed by the defense that the defendant is, or ever was, in a condition of "frenzy or raving madness." It is claimed, however, I believe, and the defense insist.

1st.—That the defendant was on the day of the homicide afflicted with a “general deprivation of understanding” or in that condition of mind in which the mental powers were wholly perverted or obliterated. That he was “incapable of rational action.”

2d.—Or if *not* so wholly irresponsible that at least “the legal and true character of the disease, the insanity of mind” with which the defendant was at the time of the homicide afflicted, was “delusion,” or as the physicians express it, “illusion” or “hallucination.” And it is urged that because, or growing out of, the mental condition of the defendant, as indicated or evidenced by such delusions, he could not and *did not* “understand the moral character, the general nature, the consequences and effect of the act (the homicide) with which he is charged, nor exercise his reasoning faculties with respect to it.” Or,

3d.—That even if not in exactly either condition of mind, which I have just described, as the first and second claims respectively of the defense, he nevertheless was, because of his mental condition, because of delusions, or because of his mental condition, as evidenced or indicated by the delusions, he was impelled to do what he did “by an insane impulse, which, by reason of his diseased or disordered mind, he was unable to resist or control.”

The defense claim that the evidence in the case establishes, that the defendant did, at the time of the homicide, entertain, and had for several years theretofore entertained, one or more insane delusions. Among them that he had been poisoned at the time and in the manner which you have heard detailed, and again that he had for several years harbored a delusion respecting some dealings had some years ago, between Mr. Kennedy and his father, and about which, after the death of the father, the defendant had some interviews or dealings or both with the deceased.

It is also urged that these delusions (as they are alleged to have been) were interwoven or connected together, or that at least the defendant, in his disordered mental condition, associated the Catholic brotherhood, whom he believed had wronged and were pursuing him, with Mr. Kennedy the deceased, and with the former dealings.

Please remember gentlemen that I have not been arraying before you my understanding of the facts, but I have simply stated as well as I can, my understanding of the position of the defense and of their theory of the leading facts in the case.

On the part of the prosecution it is denied :

1st.—That the defendant is or ever was wholly insane, wholly irresponsible, or,

2d.—That the delusions, if any, which he harbored had any connection with the homicide, and

3d.—It is claimed by the prosecution that the defendant was mentally responsible for crime. That he well understood what he was doing, its nature and character, and that it was wrong and criminal, and they urge that it was the cool, deliberate work of a man in pos-

session of abundant mental capacity to render him responsible for his criminal acts, and that, in fact, the homicide was a deliberate, wanton murder, the outcome of a settled design to revenge himself for a real or fancied injury which he had, or supposed he had, previously suffered at the hands of the deceased.

It is also said by the prosecution, that the defendant was *not* laboring under an insane delusion as respects his dealings with Mr. Kennedy, but that the facts as they existed, and as the defendant understood them, might naturally induce the belief on his part, that he had really been wronged.

The prosecution do not assert, that he really *was* wronged by the deceased, but they do say, that he was warranted upon a superficial view of the facts, as he understood them, in *believing* that the wrong had been done him by Mr. Kennedy.

Now, gentlemen, as to these positions I advise you—

1st.—If the defendant was at the time of the homicide wholly incapacitated mentally, a “mad man,” without intelligent or rational understanding, or in a condition of frenzy or raving madness I hardly need say he is not responsible for his act. Again, I instruct you generally that a defendant charged with murder is “not to be held responsible when, at the time of the commission of the homicide, he was incapable of determining whether the act was right or wrong.”

In considering this case, and the defenses which have been presented, the jury should consider the following questions :

1. Was the defendant at the time, the time of the act, as matter of fact, afflicted with disease of the mind, was he wholly or partially insane.

2. If he *was* so afflicted, did he know right from wrong, as applied to the homicide in question.

If he *did* have such knowledge, had he, by reason of the duress of such mental disease, so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was, at the time, destroyed, and if so, was the homicide so connected with such mental disease, in the relation of cause and effect, as to have been the product of it (the mental disease) solely. If you are satisfied from the evidence that the defendant was mentally afflicted, so that he did not know right from wrong, as applied to the act, or if he *did* know, but by reason of the duress, the stress of his mental disease (if he had any), he had no power to choose, no power to avoid doing what he did, and if the homicide was the product of his mental condition solely, or, if by reason of the insane delusions which the defendant had been harboring (if any), he had reached that condition of mind where the morbid impulse to kill became irresistible, and existed in such violence as to subjugate his intellect, control his will and render it impossible for him to do otherwise than to yield and do as he *did*, then he is not to be held accountable.

"If some controlling (mental) disease was in truth the acting power within him, which he could not resist, then he will not be responsible."

"If a person commit a homicide under the influence of an unaccountable and irresistible impulse, arising *not* from natural passion, but from an insane condition of the mind, he is not criminally responsible."

On the contrary, if you are satisfied from the evidence that the defendant was *not* insane, either wholly or partially, that he had no mental affliction, or if you are satisfied that even though he *was* to some extent afflicted mentally; that he was, to a degree, mentally unsound he still had sufficient capacity to understand, and did understand, right from wrong, as applied to his act, and you are further satisfied that there was no such duress, such stress of his mental disease as to render him powerless to choose, powerless to avoid doing the act, that his free agency was *not* destroyed, that the homicide was *not* the product of his mental infirmity (if he had any), then he should be held responsible and convicted as indicted.

"It is almost needless to add, that where one does not act under the duress of a diseased mind or insane delusion, but from motives of anger, revenge or other passions (understanding the nature and character of the act he is about to do, and that it is wrong), he cannot claim to be shielded from punishment for crime, on the ground of insanity."

And now, gentlemen, I can say very little more, to assist you in the discharge of your duty, in this most important case.

It must not be forgotten that cases of this character, are of overwhelming importance to the parties charged, as well as to the public and to society.

You will not fail to give to the consideration of this case your best efforts and your most faithful and earnest devotion.

You will not neglect to carefully, scrupulously and faithfully review and discuss with each other, all the evidence which has found lodgment in your minds, and when, after you shall have done all these things, you reach, as you doubtless will, a conclusion, to which you shall all be able to agree, you will act upon it and return into court and pronounce your verdict.

If upon the whole case, as it has been presented, you shall finally entertain a reasonable, rational doubt as to the guilt of the defendant of the crime laid to his charge, then he should be acquitted. If you are satisfied beyond such doubt that he is guilty, then he should be convicted.

Take the case, go to your room, reach your conclusion in the light of the law; return into court and declare the result, and all good citizens will respect your determination whatever it may be."

The jury found a verdict of not guilty.

The prisoner was acquitted and sent to the Government Hospital for the Insane at Washington, in charge of our member, Dr. W. W. Godding, Medical Superintendent.

At my request, he has furnished me with the following statement, of the present mental condition of Daly:

GOVERNMENT HOSPITAL FOR THE INSANE,
WASHINGTON, D. C., May 23, 1888.

CLARK BELL, Esq.,

President Medico-Legal Society, New York:

MY DEAR SIR:

I herewith enclose brief statement of Daley's condition at present time.

Yours very truly,

W. W. GODDING.

John Daley, a native of Ireland, age about 50, admitted to the Government Hospital for the Insane January 14 1888, by order of the Secretary of the Interior, having been found not guilty of the murder of Joseph C. G. Kennedy, Esq., of Washington. This by reason of insanity. He has remained without apparent change in his mental condition since his admission; he is quiet and orderly, and makes no complaints, but manifests evidence of delusional ideas, that are so far controlling ones, that he shows no disposition to do any work, and when asked about himself, calls attention to sores on the surface of his body, the result, as he says, of poison.

I regard the case as one of chronic mania characterized by delusions that are fixed, and likely to remain so. Those who are curious in classification, and ambitious to air their nomenclature might call it paranoia, but the conditions are essentially those, of chronic insanity of the type of mania.

His bodily health has improved somewhat, and he has gained flesh since admission to St. Elizabeth.

W. W. GODDING, M.D.

These two cases, the former a decision of the highest Appellate Court in the State of Alabama, and the latter, by one of the judges of the Supreme Court of the District of Columbia, at the National Capitol, indicate the change which is going on, this side the Atlantic in the judicial mind. I trust it will in the near future, be universal in the American States, and help to lead the way to such legislation in the English Parliament, as that contained in the law, proposed there in March, 1884, the work of an

eminent English jurist, with the approval of the late Chief Justice COCKBURN, setting at rest in English speaking countries a question, so full of interest to every citizen, and so pregnant with the rights and destiny of the insane.

RAPE BY BOYS.

A PRESUMPTION OF LAW CHANGED BY CLIMATIC CONDITIONS.

BY DANIEL L. BRINTON, ESQ., L.L. B.

Our ancestors brought with them to this country on their settlement here the laws and customs of the mother country in so far as those laws were adapted to their needs and circumstances and had been introduced and practiced in the Courts here. They brought with them the Statute Law as enacted by Parliament, and they also brought with them the Common Law, that great body of the law growing up from the customs and practices of a people and running back to a time when Parliaments were unknown and the laws were the outgrowth of the exigences of a people. They brought with them the Civil and Criminal Law, with their fixed rules, adjudicated principles and presumptions. It was well established that the presumptions were of two kinds; rebuttable and conclusive. Rebuttable were those where evidence would be received to show a contrary state of facts, *i. e.* ; a receipt raises the presumption that a debt has been paid, while evidence may be offered that it has in fact not been paid. It was a conclusive presumption of the Common Law that an infant under the age of fourteen was physically incapable of committing the crime of rape. No evidence could be offered to show that in a particular case the physical ability might be otherwise. The English law had ever looked with tender solicitude on young boys, and from remote times the only punishment for their crimes was

that received from those who had paternal control over them. By the Ancient Saxon law, the age of twelve was established for the age of possible discretion, when first the understanding might open. And from thence until fourteen it was *aetas pubertate proxima*, in which the infant might or might not be guilty of a crime, according to his natural capacity or incapacity. This was the dubious age of discretion : but under twelve it was held that he could not be guilty in will, neither after fourteen could be supposed innocent of any capital crime which he in fact committed. But the law, as it now stands and has stood since the time of Edward III, the capacity of doing ill or contracting guilt is not so much measured by years and days, as the strength of the delinquent's understanding and judgment. One lad of eleven may have as much cunning as another of fourteen. (4 Stephen's Comm. 114).

So that the law now is that under seven a boy cannot commit a felony. Between the ages of seven and fourteen the mental and physical development of the boy and his understanding of the nature and consequences of his acts are considered and he may be convicted of the commission of a felony. Over the age of fourteen he is judged as adults are. Though the change and developement had grown up in the English law with reference to all other felonies committed by infants, yet probably because of the peculiar nature of rape as compared with other felonies, involving physical growth as well as evil intent, the law has not been changed. By the English law a boy under the age of fourteen is *conclusively* presumed incapable of committing the crime of rape. Though this is now a well settled principle of the English law, there are no early cases decisive of the point. It seems to have become a fixed rule of the law,

so that in Lord Hale's time, 1650, he could write without giving any authority for his statement: "An infant under the age of fourteen is presumed by law unable to commit a rape, and therefore it seems cannot be guilty of it, and though in other felonies *malitia supplet aetatem* in some cases as has been shown, yet it seems as to this fact the law presumes him impotent as well as wanting discretion." (Hale's P. C., 630. I. Russell "On Crimes," 905).

This dictum of Lord Hale's has been followed by the English cases, and, though it was urged that no authority is cited by the learned writer for his opinion; yet that dictum has been made the law of England by its adoption in subsequent cases.

In *Rex vs. Eldershaw*, 3 C. & P. 396. (1828), it was held that a boy under the age of fourteen cannot be convicted of an assault with intent to commit rape. From his age, the law concludes that it is impossible for him to complete the offense.

Rex vs. Groombridge, 7 C. & P., 582 (1836), the prisoner accused of rape having been found to be under fourteen was discharged.

Regina vs. Phillips, 8 C. & P., 736 (1839), Patterson J. said: "I think that the prisoner could not in point of law, be guilty of the offense of assault with intent to commit a rape if he was at that time under the age of fourteen. And I think also, that if he was under that age, no evidence is admissible to show that in point of fact he could commit the offense of rape."

Reg vs. Jordan, 9 C. & P., 118 (1839), a boy under the age of fourteen cannot by law, be convicted of feloniously carnally knowing and abusing a girl under ten, even though it be proved that he has arrived at the full age of puberty. However, under 1 Victoria C. 85, S. 11, a

boy under fourteen indicted for rape, by reason of non-age considered incapable of committing rape, was convicted of an assault. (*Regina vs. Brimlow*, 2 Moody C. C., 122). From these cases it will be seen how firmly the principle is established in England, following the authority of Lord Hale. But in none of them is any reason given why from physical causes it should be as it has been held to be. In the very first case, however, that arose in America there is found a reluctance to follow the rule. In *Com. vs. Green*, 2 Pick, 380 (1823). Indictment and conviction of infants under fourteen of an assault with intent to commit rape. The Court, J. Parker, dissenting: "The verdict must stand and judgment be entered upon it. The law which regards infants under fourteen incapable of committing rape was established *in favorem vite* and ought not to be applied by analogy to an inferior offense, the commission of which is not punished with death. A minor under fourteen or just under, is capable of that kind of force which constitutes an essential ingredient in the crime of rape, and he may make an assault with intent to commit that crime although by an artificial rule he is not punishable for the crime itself. Females might be in as much danger from precocious boys as from men if such boys are to escape with impunity from felonious assaults as well as from the felony itself." In this case there was evidence of the ability of the boy to commit the crime. It will be seen that in this case an assault with intent to commit rape was held to admit of punishment, while it was admitted the crime might itself go unpunished. In the English cases, however, it was seen that not only the crime but the assault with intent to commit the crime comes within the rule of Lord Hale. *Rex vs. Eldershaw*, *supra*.

The first decided departure from the English rule was in *Williams vs. State*, 14 Ohio, 222 (1846), where the court said: "The law presumes that an infant under the age of fourteen is incapable of committing the crime of rape, but this presumption may be rebutted by proof that such person has arrived at the age of puberty." After stating the English doctrine the Court continues: "We admit that we have much hesitation in departing from long established principles of law, which have had the sanction of the wisest judges and test of years. But in a vast majority of cases infants under the age of fourteen are incapable of emitting seed, then it is reasonable presumption that any named infant under that age is incapable of committing the crime. Now, in the moist and cold climate of England and in most of the countries of northern Europe, it is so seldom that an infant under fourteen is capable of emission, that it is assumed as a fact that prior to that age he is never capable, and hence, under that age no one can be convicted of rape. This rule there, may have reason. But in tropical climates where the male usually arrives at puberty before the age of fourteen, the rule, instead of being founded in reason, would contradict both reason and fact. It is an admitted law of physiology, that climate, habit and condition of life, must have influence in hastening or retarding the age of puberty. Different races of men differ as to the age of puberty. In our climate the age of puberty is frequently earlier than in that of England or the more northern States of this Union. We have among us nearly every variety of the races of men." To adopt this rule where the climate, condition and habit of a people are different would be unreasonable. The presumption may be rebutted by evidence that the infant has arrived at the age of puberty and is capable of emission."

And in a subsequent case it was held that the burden of proof was on the State to show capacity. *Hillabiddle vs. State*, 35 Ohio St., 52 (1878). Here for the first time the influence of climatic conditions is considered and liability is placed on the ground of physical ability to commit the act. The presumption is no longer a conclusive one; it has become a rebuttable presumption. So in *2 Parker (N. Y.)*, C. C. 174 (1855), it was said that the principles of the Common law are not inflexible and are in force here only so far as they are applicable to our conditions. While there may be reasons for the existence of the rule in England where boys rarely arrive at the period of puberty under fourteen, the same circumstances render it inapplicable in this State where the period of puberty is reached before that age. So also in *Waggoner vs. State*, 5 Lea (Tenn.), 352 (1880), it was held that the presumption of incapacity of a boy under fourteen years of age to commit rape is not conclusive, but may be removed by proof. In *State vs. Jones*, 3 So. Rep. 57. (Louisiana 1887), *Crim. Law Mag.* Vol. 10, p. 89, there is a still further departure from the English rule. The judge below was asked to charge the jury that it was a conclusive presumption of law that an infant under fourteen could not commit rape. He refused, and gave the instruction that there was no presumption whatever founded on age, but that his physical capacity to commit that crime was to be determined by the jury from the evidence. The Supreme Court of Louisiana sustained the ruling of the lower court and adopted the views of *Williams vs. State*, *supra*, and *Commonwealth vs. Green*, *supra*, and said: "It is admitted that the charge asked embodied the rule adopted by the common laws of England, but the American decisions above referred to, held that the rule was based upon the physiological

fact that in the climate and among the population of England and the northern countries of Europe puberty was so rarely attained under the age of fourteen in males as to justify the presumption that prior to that age a boy is incapable, and hence cannot be convicted of rape. But recognizing that the period of puberty is affected by circumstances of race, climate, habits and conditions of life, and discovering as a fact that in this country puberty is frequently attained at an earlier age than fourteen, they refuse to apply the English rule, holding that the rule being founded wholly upon the facts prevailing in England, had no application to the different facts existing in this country. The reasoning applies with much greater force to the climate and racial conditions of Louisiana." And further the Court said that in rejecting the English rule there was no foundation for any presumption of incapacity whatever.

But these climatic considerations have not prevailed in North Carolina and Florida where the English rule has been maintained. *State vs. Sam. I. Winston* (N. C.), 300. (1864), while admitting the influence of climate, habit, conditions of life and race, in influencing an early physical development and suggesting that it might be advisable to move down the presumption to an earlier age than fourteen, held that the English rule must be followed until the Legislature had enacted otherwise, and a boy under fourteen could not be convicted of the crime of rape or of an assault with intent to commit the crime. To the same effect is *State vs. Pugh, 7 Jones* (N. C.), 61, 1859. *Williams vs. State*, 20 Fla. 777 (1884), held that a boy under the age of fourteen is incapable of committing the crime. In California, it is enacted that "an infant under the age of fourteen years shall not be found guilty of any crime." Rev. Stat. 1850, C. 99. Sec. 4.

From the examination of the authorities it is seen that in England, North Carolina and Florida, and in California by Statute a boy under the age of fourteen cannot be convicted of rape. In Ohio, Massachusetts (perhaps), New York and Tennessee, the presumption in favor of the boy may be overthrown by evidence showing physical capacity. In Louisiana there is no presumption whatever.

The leading American writer on Criminal Law still inclines to the English rule. Bishop Criminal Law S. II., 17. "We can hardly suppose the instances of physical capability exhibited at an earlier age than fourteen sufficiently numerous to call for the abolition of a technical rule so well adapted as this to prevent those particular statements of indecent things which wear away the nice sense of the refined, placed by the Maker in the human mind as one of the protections of its virtue." A nice sense of the refined, however, should not lead us to overlook the laws of nature which in warm climates conduce to early physical development, consequently puberty rests a responsibility at an earlier age. Though a respect for a law and its force depend upon its stability and certainty, yet in a peculiar crime like rape it should be flexible enough to adapt itself to the great variety of soil, climate and races found in a country like ours embracing so many degrees of latitude. The reasonable rule for this country is that of *Williams vs. State*, 14 Ohio, 222, where the boy has the benefit of a presumption of incapacity, but which may be rebutted by medical evidence showing ability and capacity. By this rule a due regard is had for the climatic and race influences of the several states, and guilt or innocence becomes a question of evidence. If law is the perfection of human reason it must keep pace with the spread of civilization

and the discoveries and observations of science. A law reasonable at the time and place of its inception may elsewhere and at a later period be inadequate to the changed conditions of society. The observations and investigations of scientists and travellers reveal to us the wonderful influence of climate on not only the physical, but the mental characteristics of a people. In warm climates there is a lack of tonic excitation, a want of energy, an enervation, a listlessness; where, as Montesquieu says, "laziness is happiness," and where great enterprises find no encouragement.

This is an influence which cannot be resisted and overcome by the most indomitable, for the Roman lost his vigor of action in the Orient, the German his energy on the African coasts of the Mediterranean, and the Englishman becomes lazy and sensual in the East Indies. Both in the animal and vegetable world there is an early and luxurious growth and development, while decay comes as rapidly. Boys reach the age of puberty at a very early age and girls become mothers at ten and twelve. There is a forced and early growth which fills with wonder the traveller from colder climates. With the facilities of communication now offered there is a movement from place to place of people from various climates and countries and habits of life. With the warm climate of our southern states and the influx of new people bringing with them their racial and climatic conditions, a law which is to throw around their people its protection is certainly not the one brought from and fitted to another country where different conditions and different climates prevail. The Courts have acted wisely and in accordance with physiological facts in holding that the presumption of incapacity in boys under the age of fourteen might be overthrown by showing that in a particular case there was capacity.

*ABORTION, EVIDENCE BY AUTOPSY.**

BY W. THORNTON PARKER, M. D.

“I hereby transmit a duly attested copy of the record of autopsy on the body of a young woman found lying dead at Newport, R I., Friday, Nov. 18, 1887, and supposed to have come to death by violence. The said autopsy was made upon being thereto authorized, in writing, by the Mayor of Newport, at 6 o'clock in the afternoon of Saturday, the 19th day of November, A. D. 1887, and in the presence of Drs. Rankin and Kenefick, residing at Newport, and undertaker Shea, residing at Newport, witnesses.

Section made twenty-four hours after death. Body that of a well-nourished woman, presumably 28 years of age. Rigor mortis partly developed. External examination discloses a very patulous, lacerated, discolored and abnormal condition of the external genitala. Internal examination—stomach and contents removed for further examination and analysis, by Professor Thompson of the Rogers High School, who, after a careful testing, reports that the results were negative, and that in his opinion no trace of poison could be found. Examination of the abdominal cavity presented evidences of former severe pelvic peritonitis and pelvic cellulitis. Liver, spleen and other abdominal viscera normal. Thoracic cavity and contents not examined. The womb presented an enlarged appearance, the walls being thickened, congested and discolored throughout. The superior portion, or fundus, instead of being flat, was convex in shape. Length (ver-

* Read before the Medico-Legal Society, May 9, 1888.

tical diameter, 2.28 inches ; weight about one and one-half ounces. The os was decidedly oval in shape and the edges punctured, and in the left portion appeared to be torn or cut. The ovaries disclosed what appeared to be a distinct corpus luteum of about about the eight or twelfth week of pregnancy. In the opinion of the medical examiner, the uterus presented reasonable appearances of having been impregnated at not a very remote date, and it was decided that the case was a proper one for the Coroner's investigation.

And I further declare it to be my opinion that the said person came to her death, very possibly, if not *presumably*, from peritonitis and septicæmia following artificial abortion."

(Signed)

W. THORNTON PARKER, M.D.

Medical Examiner.

GENERAL REMARKS.

The examination (post mortem) was probably made at least four weeks after abortion (instrumental) had been performed, and on that account it was extremely difficult to find any proof of delivery of uterine contents artificially. The appearance of the *corpora lutea* being the most important sign.

When we consider the condition of the external genitalia, the patulous and greatly discolored appearance of the external genitalia, vagina and uterus ; the increased size and appearance of the uterus, and the torn and enlarged external os-uteri, together with the presence of severe pelvic cellulitis and peritonitis, and the very distinct "corpus luteum," presumably of the tenth or twelfth week, we must feel quite certain that the organs referred to are *certainly* not those of a young woman in the virgin state, if indeed they *could* belong to what is generally understood by the term "*nullipara*." The testimony of

the physicians in attendance points very suspiciously to a case of death from *instrumental abortion*. Query—Could excessive and continued masturbation, by the use of candles and other means of excitement—if associated with pelvic cellulitis and peritonitis, account for the extraordinary condition presented by the organs of generation on this young woman? Does not the injury to the external osiuteri and the enlarged, thickened and greatly discolored condition of the uterus, very forcibly suggest criminal abortion, and would not a medical examiner who should fail to present such a case to the coroner for his investigation and dismiss it without further examination, would be guilty, in my opinion, of gross neglect of duty.

Concerning the corpus luteum, Lusk (p. 38) says: "If the ovum is discharged without impregnation taking place, the corpus luteum reaches the maximum size at the end of three weeks, and then begins to decline until at the end of two months, it is reduced to an insignificant cicatrix"—*but* when conception occurs the changes in the corpus luteum take place more slowly. The corpus luteum reaches a higher state of development. Its increase in size continues for two months. It remains stationary up to the end of the sixth month, and at that term is at least one-half inch in diameter. The corpus luteum of pregnancy is the corpus luteum *ulva*.

It seems to me that in the face of such statements an indictment should have been made by the coroner, whereat, in point of fact, the matter was dismissed.

Dated at Newport, in the County of Newport, this 29th day of April, A. D. 1888.

*IS BELIEF IN SPIRITUALISM EVER EVIDENCE
OF INSANITY PER SE ? **

BY MATTHEW D. FIELD, M. D., of New York.

Much interest has been recently shown by the public in this question. The developments that resulted in placing certain persons in the Tombs, and their indictment, have led people to ask what is the mental condition of one of their prominent believers who had given a large amount of property to place the "Science" on a sure foundation? Is this gentlemen capable of filling a position of trust, requiring skill and judgment? Was his firm belief in the reality of the manifestations that he saw, evidence, in itself, of mental degeneration, of defective judgment, sufficient to indicate insanity?

A will contest is now going on, in an adjoining State, where it is claimed that the testator was influenced by spirits, and acted in accordance with information that he believed came from the unseen world.

Last year I was a witness in a case where the testamentary capacity of a gentleman, who died leaving a large fortune, was attacked before the Supreme Court in this State. Besides other evidences of Insanity, it was shown, during the course of the trial, that this gentleman had, for some years previous to the execution of his will, been in the habit of receiving communications from the dead, and, from the living, whom he knew to be many miles distant at the time; that he conferred and advised with these spirits upon matters of business; and also that his actions were governed, in certain instances,

* Read before the Medical-Legal Society, June 13, 1888.

by these spirit communications. It was also shown that this gentleman's second wife was a spiritualist, and had written quite extensively upon that subject. The lawyers for the defense attempted to ignore all other evidences of Insanity, except those of his conversing with the spirits, and, of course, held that belief in Spiritualism was no proof of Insanity.

Examinations of Medical literature show very little that has a direct bearing upon this question.

In this case I held that it was necessary to divide the question, or, rather, to classify the believers in Spiritualism.

Those who have an abstract belief in the communion of spirits I did not consider at all ; for no abstract belief is evidence of Insanity *per se*, no matter how absurd it may be. And again, as most religions treat of a future life, and of the participation of the soul, or of the spirit, in the enjoyments or miseries of the hereafter, and that spirits have communication, one with another, it is but a step to believe that spirits may return to this earth. As is related in the Bible, Elias and Moses appeared unto Christ when he was accompanied by Peter and James and John. It is only when the individual himself participates, that Insanity may be suspected. In Insanity the *ego* is always involved. People may believe that God can talk to us. This may be, to some, the most reasonable belief, or, to others, the most absurd. The belief that He can or cannot speak to us here assembled, has naught to do with Insanity ; but, if an individual states to you, in sober earnest, that he hears God speaking to him, and his actions show, beyond peradventure, that he does believe this, then we question his sanity. For even though we believe God may talk to us, and that he did talk to Moses and many others, in the Bible times, yet

this introduction of the *ego* convinces us of mental alienation. We may believe that the ass spoke to Baalam, and assume that it is so because the Bible says so, and accept the Bible as sufficient authority for our belief; and we may believe that God can make any beast speak; but, at the present time if a person says, and evidently believes, that a beast was talking to him, we think he is insane, and we think this because the *ego* participates. Therefore, leaving the belief in Spiritualism in the abstract out of the question, we come to the consideration of the so-called spiritualists; and of these I make three classes.

First. Those who make it a business to delude and mystify; *i.e.*, the so-called mediums.

Second. Those who attend seances, and are deluded and mystified, being caused to see curious things, as hands and faces of the dead, or faces produced on virgin canvas, apparently by unseen agencies; or hear rappings and voices; receive written communications in the same inexplicable manner; things are told them that they supposed nobody else knew but themselves. By these things are they so astonished, and are so incapable of understanding how they could be accomplished, except by supernatural agency, that they believe. But this class never receive these manifestations, nor see the dead, except through the instrumentality of members of the first class.

This class embraces a large number who are, undoubtedly of weak mind; those who are superstitious and of an unstable and neurotic organization, and those who require but a slight cause to render them insane; yet, many persons of fine intelligence and brilliant mind are found in this class. There would not be sufficient, in this belief alone, upon which to base an opinion of mental incapacity.

In the third class I would place those who actually believe that they see the dead, and those at a distance, face to face, in the material form ; and that they communicate with them, hearing their voices distinctly and clearly. All of this last class I believe to be insane. At least, of the large number that have come under my observation, I never saw one who did not demonstrate his insanity in other directions as well.

It may be a very difficult matter, in some instances, to distinguish between the first and third classes, but I think the rule would hold good in every case. The difficulty would be to determine what individuals actually *believed* and what ones only assumed and claimed to believe, for the purpose of deception, gain, or self-glorification.

To distinguish between these two groups is very important, for one set is deserving of pity and kind care, and the other of reproach and punishment. This distinction once made, it is an easy matter to determine the treatment each class deserves.

In the middle class, or those who, after attending seances, and, being mystified, believe, many will be found who are insane, and those who are of an unstable and neurotic organization. Yet I am sure no one will consider that belief, under such circumstances, would be evidence of Insanity *per se*. The communications, materializations and other manifestations, are always received through the instrumentality of members of our first class. The perceptions, under such circumstances, are real ; there is an actual external object produced, in some manner, by the so-called medium. The belief in the supernatural production, and that the communications received are actually from the dead, or those at a distance, is a delusion, beyond doubt. Yet, this

false belief cannot be justly considered an insane delusion. However, such belief, taking strong possession of an individual of mature years, of acknowledged good judgment, one whose intelligence and will had always dominated his emotions, would arouse strong suspicion of mental deterioration. Whenever we discover *alteration* in an individual's mode of thought, actions and emotions, we are sure of some mental change as well. Yet it may be only the beginning, and proper care and treatment may arrest insanity; still, such alteration is always a grave symptom.

This belief, held by persons who, we know, have always been emotional, superstitious and fanatical, would be of slight significance, as it would be in harmony with the usual mode of thought of such an one. We have already mentioned that among the middle class are found many unstable and neurotic organizations; these individuals are more easily upset, and become insane from causes that would not affect those with strong and healthy nervous systems. These people are always drawn to everything mysterious, and all that appeals to the emotional side of their nature. Many minds of this class are unbalanced and destroyed by every public excitement, where the feelings and emotions are thoroughly aroused.

What could more strongly excite the emotions, at the expense of the intellect and will, than a spiritualistic seance, with its dim and ghastly light, the expectation of supernatural communication, those present being often startled and astonished by what is seen and heard? Much Insanity is unquestionably caused by this means, and, I believe, great misery and distress results from every outbreak that brings this subject prominently before the public.

I must, in justice, say that the delusions of many insane take the direction of Spiritualism, where spiritualism itself had really nothing to do with the production of the Insanity. An insane person may believe that the spirit of Abraham told him to sacrifice his child, and he acts in accordance with this command. Another is told by the spirit of his dead child, to reward people in this world for kindness done him while living ; and he does as requested. A third hears the voice of God proclaiming him to be the second Christ.

The Insanity, in each of these cases, may have come from the same cause ; and that cause may have been masturbation. The false belief following, and being dependant upon, false perceptions ; that is, an individual of diseased brain has an hallucination ; by this I mean a sensory hallucination, an involuntary perception, without corresponding external object. If the false perception be, as in the cases cited, one of hearing, the insane individual does as a sane person would do, tries to explain how this voice reaches him. He fails to do one thing that a sane man would do, namely, correct the false perception by the other senses and by his intelligence. But, notwithstanding that he fails to correct the false perception, he nevertheless tries to explain, and does explain to his own satisfaction. He does not see the individual who is speaking, and he looks to some mysterious agency. One satisfies himself that it is the spirit of Abraham ; the second, that it is the spirit of his dead child ; and the third, that it is the voice of God. A fourth might believe the voice was that of a witch ; and a fifth, that it was a telephone. Had there been no spirit, God, witch or telephone known to the world, these people would all have become insane, had hallucinations of hearing, but would have explained them in some different way, and

have built up some other delusion, in accordance with the other explanation. It is quite probable that the larger number of persons, whom I place in the third group, and whom I would consider insane, may never have been believers in spiritualism, and never have attended a seance in their lives. They first become victims of hallucinations of the senses, and these false perceptions become fixed beliefs and the delusions were founded upon these, the spiritualism being only the means of explanation to their own minds. After they have once turned their thoughts to the subject, they dwell thereon, and their disordered brains build up new and more elaborate delusions in that direction. Whatever subject there may be most prominent in the community, at a given time, which has about it the greatest element of mystery, will most likely shape the direction of insane delusions, at that particular time. A few years ago, and very often now, the telegraph, telephone and electricity, played a large part in the delusions of the insane, and spiritualism has been correspondingly less prominent, and witchcraft insignificant. To illustrate how easily delusions may be built up from sensory hallucinations, I can state that I have seen at least a score of insane people who believed that Mr. Jay Gould was persecuting them. The steps in the foundation of this delusion, in these cases, were as follows: First, the hallucination of hearing; second, explanation must come by telephone; third, Mr. Gould controls all the telegraphs and telephones, and it must be he who is persecuting them.

The eminent editor of *The Alienist and Neurologist*, in the latest number of that periodical, after quoting freely from a recent sermon of the Rev. Dr. Talmadge, on "Spiritualism and Insanity," observes: "The Superintendents of American and foreign Asylums for the In-

sane, will bear out this theologian's statements that spiritualism makes many lunatics, and the counter statement that lunacy makes spiritualists * * * *
All alienists must concede, from observation, that spiritualism has destroyed some of the brightest intellects."

It hardly seems necessary to devote much time to the consideration of my reasons for considering all of those insane who would come under my third class. I restricted this class to those who actually believe that they see the dead and those at a distance, face to face, in the material form ; and that they communicate with them, hearing their voices distinctly and clearly. Here I would emphasize the actual belief in the reality, and the fact that this class see and hear by themselves, when not aided by any medium or second person. These individuals are the victims of well-defined, sensory hallucinations ; and that, as they actually believe in their reality, it is evident that they do not correct their false perceptions by other senses, or by their intelligence, but rather build up a distinct false belief.

I can imagine that my legal friends are running over in their minds many questions that they would like to ask on cross-examination of one expressing these views upon the witness-stand ; as they have in their minds so many examples of hallucinations occurring in illustrious men of great intellect, as Martin Luther, when he threw the ink-stand at the devil ; Goethe, when he saw his own shadow walking before him ; Sam Johnson, when he heard his mother's voice calling him " Sam," when she was miles away. These examples might be greatly multiplied, but we have only to reply to this, that while certain illustrious men have become insane with sensory hallucinations, as among the most marked manifesta-

tions of their insanity, others being subject to hallucinations have been able to correct these false perceptions, in the reality of which they never had a fixed or permanent belief.

EDITORIAL.

DEFINITIONS OF INSANITY—TESTS OF RESPONSIBILITY.

BARON BRAMWELL : —

“ Whom ought the law to punish ? The answer is easy—all that it threatens on conviction.

But then comes the question ; whom ought the law to threaten ? The answer is also easy—all whom would be influenced by the threat, all whom it would or might deter, or help to deter. The question, therefore in any case should be not, whether the person accused of a crime is mad, but whether he understood the law's threat. If he did not it would be wrong to punish him, because it would be useless to threaten him.

If his case was one of dementia or idiocy, so that he did not know that the thing he did was wrong, the law's threat would have been unintelligible to him, would be of no effect to deter him. An example is that of a case which I believe happened, viz : The case of an idiot cutting off the head of a sleeping man to see what he would do when he awoke. To have threatened the man who did this would have been idle : to punish him unjust and useless.

So if the accused was under a delusion that facts existed, which if they did exist, would justify the act, it would be wrong to punish him. Suppose that he was under a delusion that the man he killed was endeavoring to kill him, and that his killing was in self-defense, it would be wrong to punish him, because he would say, and say truly on his own behalf that he had obeyed the law, that the law authorized what he had done.

It would be no answer to say it did not, that he had mistaken the facts, any more than it would be to say so to a man who shot another in the belief he was breaking into a house, when in fact he was one of the dwellers in it, out late. In neither of these cases—I mean of dementia or delusion—would there be a *mens rea*.

In the first case the law's threat would not be understood ; in the second it would not be knowingly disregarded * * * *

The mad man who commits a crime, knowing that what he does is wrong, is a pitiable object, more than the sane man who commits one. Not so hateful, though, if one takes such a case as that of the man who, having some delusion or craze about windmills, was removed by his friends to where there were none, and killed a child that he might be moved back again. I think such a man as hateful as any sane criminal could be.

* * * * *

It is said that if the argument I have used is well founded, it points to the punishing of insane people more severely than the sane. I admit it cruel as it may seem. But there need be no fear of this, as the ordinary punishment of a sane man would suffice for the insane. But still the argument goes to that length. For the insane man having less mental control than

the sane, there is more necessity for the law stepping in to help him, and deter him from doing mischief.

* * * * *

But these exceptional cases are put, and one is asked would you punish that person? Extreme cases are put. For example, the case of a man who wanted from some religious craze, to be executed, and who, to bring it about, committed a murder, so that to execute him would be to do what he wanted—the threat of taking his life would be no deterrent, but an inducement to the crime. So one may take the case of the unhappy woman who killed her children that they might be in heaven, and is indifferent as to her own fate—I answer this question thus—I certainly would have the law include them. The first case was one of utter cruelty and selfishness, and neither my conscience nor pity would be moved in favor of the wretched creature. As to the woman, though she knew she was doing what the law forbids, and so was not within the rule that would justify her acquittal, yet it might be said in her case, her state of mind was such that the law's threat could not be deterred—I would not introduce any such exception into the *rule*. Minute and questionable exceptions in a law impair it, and render its application difficult. The rule should be plain and simple, though exceptions might be introduced into its application.

It is said that it is hard upon the poor lunatic that it must be admitted that from the excitement and irritability which accompany his insanity, he has less chance of keeping clear of crime than a sane person. I admit it is hard and the observation would be very forcible, if punishment was threatened out of revenge or spite.

The lunatic committing a crime is certainly less an object of anger and hate than the man who in full possession of his senses, commits one. But the law does not punish for revenge, but for preservation.

* * * * *

It will be asked, would you hang a madman?

If it were such a madman as Dove, or the wretch that last fired at the Queen, had he killed her, I say yes. The only doubt I have is whether a punishment that made them ridiculous, as flogging would not be better for the crazy wretches who shoot at kings and presidents, and other great people, out of a morbid desire for notoriety. But I retort the question, would you let every madman burn, forge, steal with impunity? If not you would punish him less than others? Why? As much? Then why not punish murderers as much?

Is it reasonable, just right, that an evil-minded, ill-conditioned, ill-conducted being, with sense enough for the law to allow his will and his contracts, should be able to commit crime with impunity.

(The *Nineteenth Century Magazine*, Dec.. 1885.)

SUPREME COURT OF IOWA, DILLON, CHIEF JUSTICE:—

Held that the capacity to distinguish between right and wrong was not a safe test of criminal responsibility in all cases, and that, if a person commits a homicide, knowing it to be wrong, but does so under the influence of an uncontrollable and irresistible impulse, arising not from natural passion, but from an insane condition of the mind, he is not criminally responsible.

"If," said Chief Justice Dillon, "by the observation and concurrent testimony of medical men who make the study of insanity a specialty, it shall be definitely established to be true, that there is an unsound condition of the mind, that is, a diseased condition of the mind, in which, though a person abstractly knows that a given act is wrong, he is yet, by an *insane impulse*, that is, an impulse proceeding from a diseased intellect, irresistibly driven to commit it—the law must modify its ancient doctrines and recognize the truth, and give to this condition, when it is satisfactorily shown to exist, its exculpatory effect."

In *State v. Feltes*, Iowa, 68.

JUDGE M. V. MONTGOMERY —Charge to the Jury in Case of Daley (1888.)

1st.—If the defendant was at the time of the homicide wholly incapacitated mentally, a "mad man," without intelligent or rational understanding, or in a condition of frenzy or raving madness I hardly need say he is not responsible for his act. Again, I instruct you generally that a defendant charged with murder is "not to be held responsible when, at the time of the commission of the homicide, he was incapable of determining whether the act was right or wrong."

In considering this case, and the defenses which have been presented, the jury should consider the following questions:

1. Was the defendant at the time, the time of the act, as matter of fact, afflicted with disease of the mind, was he wholly or partially insane.

2. If he *was* so afflicted, did he know right from wrong, as applied to the homicide in question.

If he *did* have such knowledge, had he, by reason of the duress of such mental disease, so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was, at the time, destroyed, and if so, was the homicide so connected with such mental disease, in the relation of cause and effect, as to have been the product of it (the mental disease) solely. If you are satisfied from the evidence that the defendant was mentally afflicted, so that he did not know right from wrong, as applied to the act, or if he *did* know, but by reason of the duress, the stress of his mental disease (if he had any), he had no power to choose, no power to avoid doing what he did, and if the homicide was the product of his mental condition solely, or, if by reason of the insane delusions which the defendant had been harboring (if any), he had reached that condition of mind, where the morbid impulse to kill became irresistible, and existed in such violence as to subjugate his intellect, control his will, and render it impossible for him to do otherwise than to yield, and do as he *did*, then he is not to be held accountable.

"If some controlling (mental) disease was in truth the acting power within him, which he could not resist, then he will not be responsible."

"If a person commit a homicide under the influence of an unac-

countable and irresistible impulse, arising *not* from natural passion but from an insane condition of the mind, he is not criminally responsible."

On the contrary, if you are satisfied from the evidence that the defendant was *not* insane, either wholly or partially, that he had no mental affliction, or if you are satisfied that even though he *was* to some extent afflicted mentally; that he was, to a degree, mentally unsound he still had sufficient capacity to understand, and did understand, right from wrong, as applied to his act, and you are further satisfied that there was no such duress, such stress of his mental disease as to render him powerless to choose, powerless to avoid doing the act, that his free agency was *not* destroyed, that the homicide was *not* the product of his mental infirmity (if he had any), then he should be held responsible and convicted as indicted.

"It is almost needless to add, that where one does not act under the duress of a diseased mind or insane delusion, but from motives of anger, revenge or other passions (understanding the nature and character of the act he is about to do, and that it is wrong), he cannot claim to be shielded from punishment for crime, on the ground of insanity."

DR. TUCKER AND "LUNACY IN MANY LANDS."

The Australian journals, publish copies of a memorial signed by a very large number of the Legislative Council of New South Wales and a very much greater number of the members of Parliament of that Colony (99 members of Parliament), speaking in terms of highest praise of Dr. Tucker's labors in collecting the information at a cost of over £6,000 from his private purse, which was the basis of his book, "Lunacy in Many Lands," which memorials are addressed to Sir Henry Parkes, Colonial Secretary of that Colony, with the official letter of thanks, sent by Sir Henry Parkes to Dr. G. A. Tucker in pursuance of the memorials.

We congratulate Dr. Tucker on this popular endorsement of a labor, which cannot fail to interest every alienist and friend of the insane in the world, and hope we may in the near future see Dr. Tucker, in this country, as we learn from the same sources, he intends returning to Europe to reside. We hope to see him or hear

from him at the International Medico-Legal Congress in New York, next June.

THE AMERICAN MEDICAL ASSOCIATION will hold its 40th annual meeting, and 250th anniversary of the settlement of Newport, on the fourth Tuesday, 25th day of June, 1889.—H. R. STORER, M. D., a corresponding member of that Society, is Chairman of the Committee of Arrangements, which is composed as follows :

COMMITTEE OF ARRANGEMENTS.

H. R. STORER, Chairman.

C. F. Barker, M. E. Baldwin, C. A. Brackett, J. P. Curley, P. F. Curley, J. P. Donovan, H. Ecroyd, Jr., V. M. Francis, T. A. Kenefick, G. M. Odell, F. H. Rankin, W. C. Rives, Jr., S. H. Sears, W. S. Sherman, H. E. Turner.

W. THORNTON PARKER,
Local Secretary.

THE PAINLESSNESS OF DEATH.

The act of dying, it is now ascertained, is absolutely free from suffering; unconscious, insensibility always preceding it. Any anguish that may attend mortal illness, ceases before the close, as thousands who have recovered, after hope had been surrendered, have borne witness. Sudden and violent death, shocking to the senses, may not be, probably is not, painful to the victim. Drowning, hanging, freezing, shooting, falling from a height, poisoning of many kinds, beget stupor or numbness of the nerves, which is incompatible with sensation. Persons who have met with such accidents, and survived them, testify to this. Records to the effect are numberless.—JUNIUS H. BROWNE in the October *Forum*.

PERSONAL.

The University of Glasgow in August last conferred the degree of L.L.D., on Prof. BENJ. BALL of Paris, Prof. Dr. MORITZ BENEDICT, of Vienna, Dr. FORDYCE BARKER, of New York, and Dr. DAVID YELLOWLEES, of Glasgow, and upon other gentlemen.

At the annual meeting of the National Conference of Charities, held at Buffalo in July last, Dr. A. B. RICHARDSON, of Athens, Ohio, read a paper on "Brain Hygiene;" Dr. P. BRYCE, of Tuscaloosa, Ala., one on "The Moral and Criminal Responsibility of the Insane;" Dr. O. W. ARCHIBALD, of Jamestown, Dakota on "Practical Hints on the Care and Treatment of the Insane." And the report of the Standing Committee on Insanity, written by Dr. Stephen Smith, of New York, was submitted.

THE INSANE IN NEW HAMPSHIRE.

By the census of 1880, the number of the insane in New Hampshire was 1,056.

Dr. J. B. BANCROFT states that at the present time there are 337 in the State Asylum for the Insane, in that State, and in the various County Asylums, 437. Leaving, as he thinks, considerably more than 272 scattered through all the State in their own homes. Only one-third of the insane of New Hampshire are under State supervision. As none of the number in County Asylums, and only such are sent to the State Asylum as the County authorities choose—which number thus committed to the State Asylum is only forty-two,—They are treated in the State Asylum as private patients. Fourteen, called criminal insane, are now in the State Asylum, committed by the Courts, or the Governor and Council, from prisoners becoming insane during service of terms of punishment.

As eighty per cent. of the inmates are self-supporting, the State only furnishing \$6,000 per annum to indigent beneficiaries, it follows that practically all the indigent insane of that State are supported in County Asylums outside State supervision, of which no separate accounts or statistics of admission, discharges, deaths or recoveries are kept separate from the other pauper inmates. Nor is their admission requiring medical examination or certificate of insanity before commitment to the County Asylums. They come in solely as paupers and on the authority of County officials.

INSANE IN VIRGINIA AND WEST VIRGINIA.

DR. WINES, who commenced the work of carefully tabulating the criminal and social statistics of the census of 1880, for the Government; states in that excellent journal *The International Record of Charities and Correction*, that 397 insane persons not accused of crime, were confined in County jails in the United States, of whom 139, more than one-third the whole number, were in the two States of Virginia and West Virginia.

This, he asserts, is due to the faulty laws of Virginia before the division. It is difficult to imagine how any one can justify the continuance of such an evil. If anything can be added to the misfortunes of the insane in these States, it surely must be this last and wholly indefensible addition, to their miseries. We call upon the executives of these two states, so associated with the history and glory of our country, to bring this subject to the attention of their Legislatures at the next session, and remedy an evil of this glaring and disgraceful nature.

The lunacy statutes of these States need careful revision, and if a commissioner should be named by Governors in each State, as was done by Gov. Hoyt in Pa.,

the lunacy statutes of these historic States where the first asylum was built in America, would be abreast the progress of lunacy reform in America.

THE WHITECHAPEL MURDERS.

LONDON is profoundly moved by a series of revolting murders, accompanied with mutilations of the bodies of the victims. Thus far the police have been unable to find the least clue to the perpetrator.

All the indications point to the conclusion that these atrocities are the work of an insane person—probably of the type of Perverted Sexual Mania, the atrocities resembling similar reported cases.

PROFESSOR PROCTOR.—The sad death of this eminent scientist and astronomer, touches the hearts of many of his numerous friends in America. It is now generally believed that he did not die of yellow fever, though the physicians, who were unacquainted with yellow fever, mistook his malady for that scourge.

His removal to the quarantine at the time, could hardly have been less than fatal, though no one can doubt that the authorities supposing him attacked by yellow fever, decided that his life could not weigh against the risk of the city from infection at that date.

The post-mortem is a singular document, illustrating the importance, as does the case, of having of some physician attached to the Health Department, competent to know a case of yellow fever on sight, much less to detect it at the autopsy.

THE PRIZE ESSAYS.

We hoped to have announced the awards of the Committee in this number of the JOURNAL. The delay is due to the difficulty of having all the members of the Committee read the essays, and in obtaining a meeting to

decide upon the merits. The result will doubtless be announced at the November meeting.

MEDICO-LEGAL PAPERS.

Series No. 1, Medico-Legal Papers, is out of print, and we have offered \$5 a copy for it in vain, beyond receiving a few copies.

We have numerous offers for this volume, and several libraries wish to make a complete set before ordering the remaining volumes.

If those who desire Vol. I. Medico-Legal Papers, will send their names and addresses, to this JOURNAL, an effort will be made to publish a third edition at \$3.50 cloth, and \$2.50 paper, illustrated with portraits and sketches of distinguished men.

Vol 4, Medico-Legal Papers, is now in process of publication and about half completed. Members and subscribers desiring to secure Vols. 4 and 5 at \$3.50 cloth and \$2.50 paper, will send in their names to this Journal.

The following additional subscribers are announced :

- Dr. Horace Wardner, Anna, Ill., 1 copy, cloth.
- Supreme Court Library of Alabama, 1 copy, cloth.
- State Insane Hospital, Tuscaloosa, Alabama, 1 copy, cloth.
- Dr. S. B. Buckmaster, Mendota, Wis., 1 copy, cloth.
- Dr. E. J. Kilbourne, Elgin, Ill., 1 copy, cloth.
- New York Library, Court of Appeals, (Annex) Syracuse, N. Y.,
1 copy, cloth.
- Dr. John Abercrombie, London, 1 copy, cloth.
- Dr. M. A. McClelland, Chicago, Ill., 1 copy, cloth.
- Jacob Shrady, Esq., N. Y., 2 copies, cloth.
- C. H. Blackburn, Esq., Cincinnati, Ohio, 1 copy, cloth.
- Dr. S. C. Johnson, Hudson, Wis., 1 copy, cloth.
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- Dr. Ira Russell, Wichenden, Mass., 1 copy, cloth.
- Dr. Wm. Landau, Berlin, 2 copies, cloth.
- Dr. Frank C. Ogston, Dunedin, New Zealand, 1 copy, cloth.
- Pa. State Library, Harrisburgh, 1 copy, cloth.
- W. G. Stevenson, M. D., Poughkeepsie, 1 copy, cloth.

THE INTERNATIONAL CONGRESS OF MEDICAL JURIS-
PRUDENCE IN NEW YORK.

The action of the Medico-Legal Society in calling an International Congress of Medical Jurisprudence, to commence the 1st Tuesday of June, 1889, in the City of New York, lasting three or four days, has excited great attention, both at home and abroad. The flattering notices of the press of this city, notably the *New York Herald* and the *New York Tribune*, have been echoed in the Medical and Legal Journals of this country, as well as the more prominent of the foreign journals of the Cognate Sciences. The new journal of Medical Jurisprudence in Madrid, Spain, gives the proposed Congress extended notice, and promises its aid and support to the meeting of representative men from all countries, upon the sciences, as do a large number of foreign scientific journals.

The impetus given to the Nationalization of the Medico-Legal Society, by the addition, during the past few months, of the current Year, of more than one hundred and fifty new members, selected from among eminent and representative men of both professions, and from chemists and scientists who are now eligible to membership, in nearly every State and Territory in the United States, lends greater interest to the Congress to be held here next June, than usual, and will arouse great interest in every section of this country.

It is rather early to make any announcement of the foreign delegates and papers promised, which will doubtless be sufficiently advanced to publish in our next issue. A large number have announced that they will prepare papers to be read on the occasion, of which we shall announce a preliminary list in the December JOURNAL.

The plan of Nationalization has been framed so as to

admit active members in the various Provinces of Canada and other English Colonies, as well as all foreign countries, with a Vice-President elected in each, under which active members in England and New Zealand have been elected recently, and which will doubtless extend to many countries.

The invitation of the Medico-Legal Society for the proposed Congress, is to all persons interested in the science, whether member of the Society or not, and the various scientific societies and bodies of our own and foreign countries are invited to co-operate in the work and to send representatives and delegates to the Congress.

NOTICE TO MEMBERS.

57 Broadway, New York, September, 1888.

To the Active, Corresponding, and Honorary Members of the Medico-Legal Society :

Your numbers are now so large that I am unable to write you all personally. I wish to invite each of you to contribute a paper to be read at the International Medico-Legal Congress, to be held in the City of New York, commencing on the first Tuesday of June, 1889. Please notify me if you accept, and as soon as convenient send the title of your paper.

As this Congress is not limited to our members; but is free to all who take an interest in the science, it is hoped that every member will interest himself to secure papers from scientists home or foreign for that occasion, and advise me of the result.

Respectfully, CLARK BELL.

President Medico-Legal Society.

RECENT LEGAL DECISIONS.

Homicide Insanity.—Upon a trial for murder, when the defence is insanity, an intimation is proper, that to excuse defendant the defendant should have been from such insanity unable to distinguish in respect of the crime charged between right and wrong, or that if conscious of the act and its consequences, he must have been by reason of insanity wrought to a fury rendering him incapable of controlling his actions, and that if reason was dethroned merely by passion or revenge, defendant could not thereby be shielded from the consequences of his action. (*Williams vs. State* S. C. Ark., June 5, 1888; 9 S. W. Rep 5.)

Homicide Insanity.—To make a killing murder in the first degree, the prisoner must be shown to be capable of knowing at the time of the act its nature and probable consequence, and that he had power over his will to to have prevented him from committing the crime. (*State vs. Reidel*, Dal. Ct. Oyer and T., May, 1888; 14 Att. Rep., 550)

Same.—*Per Contra.* Held, that the omission to charge the jury in a case when insanity was pleaded as defence, that if the defendant knew the act to be wrong, but was driven to it by an irresistible impulse arising from an insane delusion he would not be responsible, was not error.

State vs. Mowry, 32 Sup. Ct. Kansas (Oct., 1887); 15 Pa. Rep. 282, citing *State vs. Nixon*, 32 Kansas, 205, approving of the dictum of Mr. Justice Valentine, where he says that "it is impossible that an insane uncontrollable impulse is sometimes sufficient to control criminal responsibility, but this is probably so when it destroys the power of the accused to comprehend rationally the nature, character and consequences of the particular act or acts charged against him, and not where the accused still has the power of knowing the character of the particular act or acts, and that they are wrong." Further along he says: "The law will hardly recognize the theory that any uncontrollable impulse may so take possession of a man's faculties as to compel him to do what he knows to be wrong and a crime, and thereby relieve him from all responsibility. Whenever a man understands the nature and character of an act, and knows that it is wrong, it would seem that he ought to be held legally responsible for the commission of it, if in fact he does commit it."

Insanity Evidence.—On a trial for murder, when insanity is relied upon as a defence, evidence of statements made by defendant to his physician six weeks previous to the homicide are not admissible in evidence. (*People vs. Hawkins*, N. Y. Ct. of Appeals, June, 1888; 17 N. E. Rep., 371.)

Same.—When insanity is interposed as a defense in a murder case, an instruction that in order to support his plea the defendant must show by preponderance of evidence, that is by the greater weight of credible evi-

dence in the case, that he was insane, is correct. (State vs. Trout, S. C. Iowa, May, 1888; 38 N. W. Rep. 405.)

Same.—When a defendant relies upon insanity as an excuse for crime, he must prove it by a preponderance of evidence. (Coates vs. State, S. C. Ark., March, 1888; S. W. Rep. 304.)

Same.—When insanity is interposed as a defence in a criminal case, it must be established by a preponderance of the evidence, and a reasonable doubt does not authorize an acquittal. (Gunter vs. State, S. C. Ala., Jan. 1888; 3 South Rep. 600.)

Same.—But see State vs. Lowe, S. C. Mo., Nov. 1887; 5 S. W. Rep. 89, holding, "That where the evidence tends to prove an insane condition of mind for years, the burden of proof is on the State to prove that the defendant was then sane or had a sane intent."

Same.—It is not proper to admit in evidence proof of the dreams of defendant in support of the plea of insanity, such dreams tending to indicate that the prisoner was haunted by the spirit of his wife, who, as he alleged, required him to kill the deceased in revenge of his wrong to her. (Spencer vs. State, Maryland Ct. of App., April, 1888; 13 Atlantic Reporter, 809.)

Same. Experts.—Non-professional witnesses, after testifying to their acquaintance with the defendant and his habits, may give their opinion as to his insanity. (Territory vs. Hart, S. C. Mont., January, 1888; 17 Pacific Rep., 718.)

Inquiry as to Sanity Before Trial.—When a prisoner is arraigned upon a criminal charge in Pennsylvania, and is believed to be insane, the court may order the jury to try the question whether he is insane or not, and if he is found to be insane may commit him to close custody for such time as he remains insane. (Webber vs. Com., 17 S. C. Penn. March, 1888; 13 Att. Rep., 427.)

Same.—When in a criminal case the defense is insanity at the time of trial, the Georgia practice is to file a special plea to that effect, and to try such plea by a special jury." (Fogarty vs. State, S. C. Ga., April, 1888; 5 S. E. Rep., 782.)

Same.—"A person accused of crime cannot be tried while insane. The trial court should ascertain whether he is insane or not by an investigation, or by the verdict of a jury. Such inquiry should not be made upon mere suggestion." (State vs. Peacock, S. C. New Jersey, Nov. 1887; 11 Atlantic Rep., 318.)

Insanity, Presumptive.—"A presumption of insanity from a prisoner's committal to a lunatic asylum, may be rebutted by evidence other than a discharge therefrom by due authority." (State vs. Davis, S. C. South Carolina, January, 1888; 4 S. E. Rep. 567.)

Same.—When a daughter rendered services to her insane mother, taking care and charge of her and waiting upon her, intending at the time of rendering the service to charge the mother for the same, such services being necessary for the well being and comfort of the mother, held, that she was entitled to recover reasonable compensation for the same in the absence of any contract. (Reando vs. Marsplay, S. C. Mo., 7 Wert. Rep., 106.)

Rape.—In a case of rape, the husband of the prosecutrix can testify that she made complaint of her ravishment, and showed him the marks

upon her person. (Hannon vs. State, S. C. Wis., Jan., 1888, N. W. Rep. 1.)

Same.—In an indictment under Mill's Code, § 1743, for assault with intent to commit rape, it is sufficient to charge that the act was done violently, etc. (State vs. Daly, S. C. Oregon, April, 1888, Pacific Rep., 357.)

Same.—On an indictment for rape upon the person of a child between thirteen and fourteen years of age, where the evidence showed that the defendant did have intercourse with her and compelled her to submit to his embraces, the court properly refused to instruct the jury to find the defendant not guilty. (Pugh vs. Com. of Ky., Ct. of App., May, 1888; 8 S. W. Rep. 340.)

Same.—In a prosecution for assault with intent to commit a rape upon a child under the age of consent, proof consent constitutes no defense, nor does impotence in the absence of proof that defendant knew he was impotent. (Ter. vs. Keyes, S. C. Dak., May, 1888, N. W. Reporter, 440.)

Same—Presumption—Infant—Capacity of an Infant Under Fourteen Years to Commit Rape.—The conclusive presumption of the English common law, that a male infant, under the age of fourteen years, is physically incapable of committing the crime of rape, was based entirely on the physiological fact that under the climate and other conditions prevailing in England, puberty is very rarely attained under that age.

The contrary being unquestionably the fact, in Louisiana the rule has no application. (State vs. Jones, Sup. Ct. La., 10 Crim. Law Mag. 89 (1888), following Commonwealth vs. Green, 2 Pick. (Mass.) 380; People vs. Randolph, 2 Park. (N. Y.) Crim. Rep. 174; Williams vs. State, 14 Ohio, 222; O'Meara vs. State, 17 Ohio St., 515; Moon vs. State, Id. 521; *vide* also Rape by Boys, by Dane, Brinton, MEDICO-LEGAL JOURNAL, September, 1888, vol. 6, No. 2.

TOXICOLOGICAL.

IMPORTANT POISONING TRIAL.—We have received from Prof. Millen Coughtrey, of Dunedin, New Zealand, the full report of the trial of Thomas Hall for poisoning his father-in-law, Capt. Henry Cain.

The prisoner was convicted on purely circumstantial evidence, based upon and fortified by, the medical evidence, finding antimony in the remains on exhumation. Prof. Ogston was the leading witness for the crown, conducting the post-mortem, and Prof. Black, both of the University at Dunedin, conducted the analysis. The case is one of great interest, and there can be little doubt of the guilt of the accused.

The medical and chemical evidence gives full and complete details of the analysis. Much of Prof. Ogston's evidence, and the chemical tests given in full detail, would be full of interest to our readers. We regret that want of space prevents our giving these at length.

This important trial illustrates the value of chemistry in the sure detection of crime. But for the unerring, careful, but indisputable evidence of the chemical analysis, this conviction could not have been had.

The prisoner was defended with great ability by both legal and medical advisers, but toxicology is of no service whatever if her finger does not unerringly point to the crime and the criminal.

TRANSACTIONS.

MEDICO-LEGAL SOCIETY.

PPRESIDENCY OF CLARK BELL, Esq.

June 13th meeting, 1888. Held at Buckingham Hotel. President CLARK BELL, Esq., in the chair.

The minutes of last meeting read and approved. The following gentlemen were elected active members, proposed by the President :

N. S. GIBERSON, M.D., El Paso del Robles, Cal.; Dr. Q. CININNATUS SMITH, Austin, Texas; GEO. CUPPLES, M.D., San Antonio, Texas; Judge M. W. MONTGOMERY, Supreme Court, Washington, D. C.; Dr. H. C. DUNAVANT, Osceola, Ark.; C. H. BOARDMAN, Prof. Med. Juris. State University, St. Paul, Minn.

Proposed by Dr. W. J. LEWIS, of Hartford, Conn. : Dr. EDWIN K. ROOT, of Hartford, Conn.; FRANK H. HOWARD, attorney-at-law, Los Angeles, Cal.

Proposed by Mr. ALBERT BACH : Mr. EDWARD M. FOX, Esq., of the New York Bar.

The President submitted the action of the ex-Committee in regard to the competition for prize essays, of works that had been previously published. The action of the Committee was approved, and the chair directed to name a committee to examine and report upon the question.

The Chair named ex-Judge Noah Davis, Stephen Smith, M.D., and E. W. Chamberlain, Esq.

Dr. MATTHEW D. FIELD read a paper entitled : "Is Belief in Spiritualism Ever Evidence of Insanity, *per se*." This paper was discussed by Dr. E. C. Dent, Dr.

Geo. W. Jacoby, Dr. C. H. Shepard, Dr. Amelia Wright, Dr. J. V. Stanton, the President, Dr. Frank H. Ingram, and closed by Dr. Field.

WM. WILKINS CARR, Esq., of the Philadelphia Bar, Assistant United States District Attorney, read a paper entitled, "*The Webber Murder Case in Philadelphia.*"

CLARK BELL, Esq., read a paper entitled, "*The New Judicial Departure in Insanity Cases.*"

This paper was discussed by Roger Foster and others. Mr. Foster moved that the President be directed to appoint delegates to represent this Society with foreign bodies for the ensuing summer vacation.

The Chair named as such delegates Roger Foster, Esq., and J. Mount Blyer, M.D.

The Society adjourned.

FRANK H. INGRAM,
Asst. Secretary.

DISCUSSION ON DR. FIELD'S PAPER.

DR. FRANK H. INGRAM: We may thank Dr. Field, for so classifying the degrees of spiritualism, that the relation of this peculiar belief to insanity, is clearly defined. His method is a good one to present, as an answer to the question often asked of expert witnesses: "Is spiritualism an evidence of insanity?"

We are compelled to regard spiritualism, as a pure religious belief, as long as it deals only with the problems concerned in other religions; but when it passes from tenets, and impresses its votaries with the conviction that they have actual, that is, material, communion with the dead, we must cease to regard it in a purely doctrinal sense. The person who believes, that he has touched the hand of the materialized dead friend, has spoken to him, and been spoken to in return, whose

thoughts and actions are guided by suggestions or directions from the so-called spirit, is a deluded being, is possessed of both hallucinations and delusions. Uncorrected hallucinations and delusions are *prima facie* evidences of insanity.

There is a feature peculiar to spiritualism, which makes it predispose to insanity, viz.: it deals with illusions; and it is but a step from an illusion, which is not of itself an evidence of insanity, to actual hallucination and delusion.

In connection with this topic, there is a question of medico-legal importance. Is the testamentary capacity of a spiritualist affected, by his belief? It is safe to assume, that there is a perversion of judgment or will, or both, when the believer is guided in his business relations, by the advice received through illusions.

DR. SHEPARD: I have only a word to say, and that is, that spiritualism with a healthy man, is a sort of epidemic; that many of us can recall passing through, and yet throwing it off after a time. While I was very much interested in the paper, I cannot but think, that those who become insane through that cause, are so unavoidably, and that spiritualism is only an exciting and not the real cause of it.

DR. AMELIA WRIGHT: I was very much interested in the paper, and agree with the author's views.

DR. J. V. STANTON: My personal feeling is one of antipathy to spiritualistic performances. It has always suggested to me a form of insanity, either acute, chronic or emotional, as the temperament may have been. I think some temperaments are necessarily more interested in spiritualism than others. There are some types of religious temperament that incline toward investigation or are in sympathy with spiritualism. I have so little sympathy with it that I can only listen.

PRESIDENT BELL: The courts have held that belief in spiritualism is not, *per se*, an evidence of insanity, notably in will cases. The courts would hold that a belief of what is described here and what I may call *materialization*, is not evidence of insanity. The doctor, in his division, makes three classes, and excludes the first as not insane. The first belong to the class described as persons who make a business of deluding others. The second are those who attend seances and are deluded. The third, those who actually believe they see the dead, communicate with them, hear their voices distinctly and clearly, and who are in his judgment pronounced insane. I do not see how I can bring myself to consent to that proposition. Take the case of Mr. LUTHER R. MARSH, who I have known for a great many years, with whom I have conversed upon this subject for the past two years quite fully. Mr. Marsh believes, as much as he believes in his existence, that he actually sees the dead in material forms, that they communicate with him, and advise him on many occasions. Upon that subject he has no manner of doubt. The question, "*Is Mr. Marsh therefore insane?*" would be a fair proposition to propound under the theory of this paper. I am satisfied that if the members of the Medico-Legal Society conversed with Mr. Marsh they would decide unanimously that he was perfectly sane. He may be entirely in error in regard to his belief. It is a deeply religious feeling with Mr. Marsh. I have no belief in spiritual manifestation myself, but cannot think all who have are insane. Mr. Marsh regards his belief akin to those miracles and manifestations related in the Bible, of which the "witch of Endor" and other phenomena are examples. I have never personally had any experience in spiritualistic seances, except on a recent occasion when I visited one. I saw peculiar phenomena, which perhaps some of the

physicians present to-night have seen, and I should not say that it was an evidence of insanity to believe in it. Supposing that we go down to the Grand Opera House and see Mr. Heller give one of his representations, in which he makes as it seems to the audience, spirits play, come out of cabinets, distribute flowers among the audience, answer questions, and do innumerable mysterious and strange things, deceiving the senses thoroughly, I should not say that the party who believes in him, is necessarily insane. I saw at the seance I attended, what appeared to be at least twenty-five spirits, who came out of the cabinet. What they were, and how they managed to appear, I had no time nor opportunity to investigate. I saw several persons who were called up to the cabinet, by their supposed deceased relations. One man said he had conversed with his daughter, and believed it as much as that he was alive. As many as fifteen or twenty persons believed that they saw and conversed with the spirits of their dear friends, in many instances they took them by the hand. In some instances a little child, as a supposed spirit of the daughter or son of one of the persons, came out, and a boy not higher than this table. Now, to say the people who believed this were insane, is a proposition I am not willing to give my consent to. They were deluded and deceived, they imagine they hear the voice of the dead and know what they say, but I do not believe any court would hold these persons insane. In insanity we look for a lesion of the brain, you have to classify, to locate a disease, and because a person believes in something you do not, is not an evidence of insanity. It might be a case where your mind or my mind was affected by it, but I do not believe the courts are prepared to adopt that idea. It is a subject which needs preparation to discuss, and is a very interesting one. I am very much obliged to the Doctor for bringing it up, and I will look more thoroughly into it.

JOURNALS AND BOOKS.

JOHN C. FREMONT.—*Memoirs etc., etc.*, Belford Clarke & Co., New York and Chicago, (1887), vol. 1, pp. 665.

The history of the Life of General Fremont is intermingled with the history of the country. It must ever be, a work of interest to every citizen, when these pages are written by the chief actor, in those eventful scenes. This must lend intensity both to its merit and its attraction. From 1828, when railways were in their infancy and a dream of the future, and steamships were unknown and yet to be built, to the present time, (which is the scope of the life of the *Pathfinder*), is embodied that era of the American nation, which signifies its greatest material growth, development, and progress.

Whoever may lay claim to originating the idea of a Pacific Railway, from the Atlantic to the Pacific, the public will always award this distinction to General Fremont.

He it was, who led the thought of his time toward the work, and his nomination to the Presidency as the candidate of the young Republican party, was largely due to the popularity won by his pioneer work, on our then unknown Western frontier.

The General wields his pen as gracefully as his sword, and this contribution from his personal recollection will add another quota to those works which like those of Benton, Grant, Blaine and others, will enrich the literature of our century, and be invaluable to the student of the coming one, with a clearer insight to the inner forces of our era, so difficult to trace by the historian who searches only in the treasures of the past time.

The first volume is completed, and we trust the health and life of General Fremont may be spared to complete the second volume.

THE JOURNAL OF JURISPRUDENCE (Edinburgh) is a valuable legal journal, published monthly by F. & T. Clark, Edinburgh, at a cost of one shilling and six pence each number. During the year it has published the "Medical Jurisprudence of Inebriety," by Clark Bell, Esq., given an extended notice of the proposed International Medico-Legal Congress in New York, attacked editorially the New York law substituting death by electricity for hanging, also "The Status Ebrietatis in our Courts," from this journal, as well as "The Trial of Dr. Middleton," of interest to

our readers, besides many original papers of great merit, reviews of works and editorial notes and comments.

THE SCOTTISH LAW REVIEW (Wm. Hodge & Co., Glasgow), vol. IV. This journal contains original papers of merit. The discussion of mooted changes in the law, reviews of books, notes from London and from Edinburgh, with reports of the sheriff and courts. The more valuable of the original papers during the past year have been "Sheriff Berry's address to the Glasgow Juridical Society," and articles on "Our Extradition Treaties," "Imprisonment for Debt," Lord Herschell's Trustee Bill, "Presumption of Life at Common Law and its Statutory Limitation."

THE LAW QUARTERLY REVIEW, edited by Frederick Pollock, M.A., LL.D., London. This able quarterly takes high rank as a legal journal. It has a varied and very able table of contents, composed of original articles, reviews and notices of books, editorial notes, and a resume of contents of exchanges.

Among the leading articles of the past year of interest to our readers, are "Evidence in Criminal Cases of Similar but Unconnected Acts," by Herbert Stephen, in January number. "The Licensing of Nuisances," by T. Crisp. Poole, in July number. "Testamentary Capacity in Mental Disease," by A. WOOD REXTON, in October number.

THE CANADIAN LAW TIMES, E. Douglas Armour editor (Toronto), the leading Canadian monthly law journal, is ably edited, and should be in the American law libraries. It has able, original articles in each number, but its great value depends upon its notes of cases decided in the various courts of Ontario, New Brunswick, Nova Scotia, Manitoba, British Columbia, Northwest Territories and the Supreme Court of Canada.

An article, on "*Pagan Marriages*," in June number, is interesting, as showing on similar facts, a decision in Canada the exact opposite of one in England. The English case is in *Re Bethell*; the Canadian case *Conolly v. Woolrich* (11 L. C. Jur. 197, in Appeal, 1 Rev. Leg. 263.)

THE IRISH LAW TIMES, edited by Ed. Netterville Blake is a weekly law journal of great excellence and value. It publishes separately paged each year an extra volume which appears as supplementary numbers arranged for binding, *The Irish Law Times Reports*, worth more than the subscription price. And it also publishes the Public General Statutes as a separate appendix for binding.

The editorial department is ably conducted, and the Journal furnishes a careful resume of topics of great interest to lawyers, and would be a valuable acquisition to every lawyer's library. Its subscription price is £1 10s., office, 53 Sackville street, Dublin.

THE CHICAGO LAW TIMES, edited by CATHARINE V. WAITE. This journal is very readable and interesting. It is now in its second volume, a quarterly, and is making steady progress and advance. It publishes a portrait in each number, usually of judges of the Supreme Court of the United States. It has original articles, frequently of a lego-historical character, and lately devotes much space to personal notices of distinguished living Chicago lawyers.

It has a department of Medical Jurisprudence ably conducted by Scott Helm, M.D. The April number contained an article by Dr. D. R. Brower on "*Simulation of Insanity by the Insane*," and one by Dr. Kernan, entitled "Insane Suicide, Insane Homicide, or Murder, Which?" The July number contains the proceedings of the Medico-Legal Society of Chicago, and the October (1888) number, an article by Dr. Jas. G. Keerrian, on "Validity of Motive as Evidence of Insanity in Criminal Cases," which the author classifies under four heads:

1. Criminal acts committed by the insane often originate in seemingly sane motives.
2. Acts committed by lunatics from an insane reason are sometimes referred to a seemingly sane motive.
3. Acts committed by lunatics may be the distant outcome of an insane delusion, yet the act be the result of a strictly logical and seemingly sane motive.
4. The execution of decidedly insane projects may be interfered with by a healthy conception.

THE AMERICAN LAW REGISTER, Phila. (The D. B. Canfield Co.) The January (1888) number commences the 1st volume of series 3 of this journal, which is 27th volume of its issue. It has an able corps of editors. Each number contains a leading article, and the remainder is devoted to recent American decisions in the Supreme Court of the United States, and in the higher courts of appellate jurisdiction in the several States.

It also contains abstracts of recent decisions in all the higher courts of the several States.

The journal is a monthly, and bound at the end of the year, makes a valuable volume for the library shelves of the practicing lawyer or the public libraries.

Books, Journals & Pamphlets Received.

DR. A. DE JONG.—HET HYPNOTISMUS, als. Genees Middel. 1888.

MILLEN COUGHTREY, M. B. C. M.; Prof. Anatomy and Physiology.—1. Address to Faculty, Otago University, Dunedin, New Zealand. Report of trial of Capt. Henry Cain. Graduation address, New Zealand University.

ENRICO FERRI.—Il progetto, Zanardelli. Codice Penali. (1888)

DR. H. KORNFELD.—Geist und Körper. Studien Über die Wirkung der Einbildungskraft. Von D. HACK TUKE. (1883.) (A translation of Dr. Tuke's work).

DR. R. VON KRAFFT EBING.—1. Eine Experimentelle Studie auf dem gebiete des Hypnotismus. (1888.) 2. Psycopathia Sexualis. (1888).

CHARLES H. FISHER, M. D., Secretary State Board of Health.—Second, Fifth, Sixth, Seventh, Eighth and Ninth Annual Reports of State Board of Health of Rhode Island. Rhode Island Registration Reports for 1879, 1880, 1881, 1882, 1883, 1884.

SMITHSONIAN INSTITUTE.—Reports of 1885. Parts 1 and 2.

J. C. MULHALL, M. D.—Transactions Missouri State Medical Association. (1888.)

PROF. DR. VON BURI.—Ueber den Begriff der Gefahr und Seine Anwendung auf den Versuch.

MRS JULIUS GLASER, Vienna (1888).—Resume of the Works, Essays, Reviews, Debates and Addresses of JULIUS GLASER, late Attorney-General of Austria and corresponding member of the Medico-Legal Society.

PROF. DR. K. B. HOFFMAN (Gratz, Austria).—1. Atlas of the Physiological and Pathological Sediments of Urines, containing 44 plates with explanations. (Braumuller, Vienna, 1872.) 2. Beverages of the Greeks and Romans. 3. Lead, as used by the Nations of Antiquity. Berlin, 1885. 4. Supposed use of soap by the ancients. 5. Antique bronzes.

HON. JOHN C. BLACK, Commissioner of Pensions.—Annual Report for 1888.

DR. JOHN B. CHAPIN.—Reports of Pennsylvania Insane Asylum from 1843 to 1887, except 1847, 1859, 1863.

ERNEST H. CROSBY, Esq.—The Legal Profession and American Progress. (1888)

DR. GEO. Z. HULBERT.—Electricity vs. Tait. (1888.)

DONALD MCLEAN, M. D.—Retrospective and Prospective Surgery, (1888).

BENJAMIN MARSHALL, M. D.—Antipyrine, (1888).

L. S. HINCKLY, M. D.—Annual Report of the Essex Co., N. J., Asylum for the Insane, (1888).

N. Senn, M. D., Ph. D.—Rectal Insufflation of Hydrogen Gas, (1888).

H. H. BARKER, M. D.—Announcement of the Medical and Dental Departments of the National University, (1888-9).

GEN. W. B. HAZEN.—Tornado Circular No. 1, (new series), Signal Office, War Department, (1888).

HENRY F. FORMAD, B. M., M. D.—Comparative Studies of Mammalian Blood, etc., etc., (1888).

Thirteenth Annual Report of the General Board of Commissioners in Lunacy for Scotland, (1888).

D. R. WALLACE, A. M., LL.D.—Medical Expert Testimony, or the Doctor in Court.

JOHN A. WYETH, M. D.—Annual Announcement of the New York Polyclinic and Hospital, (1888-9).

T. L. WRIGHT, M. D.—Alcoholic Inebriety, as Related to Responsibility, and Criminal Jurisprudence, (1888).

DAVID PRINCE, M. D.—Wounds, their Aseptic and Antiseptic Treatment, (1887).

SCOTCH LUNACY COMMISSIONS.—Thirtieth Annual Report, 1888.

DR. A. B. RICHARDSON.—Fourteenth Annual Report Athens Insane Asylum, (1887).—Notes on Irish and Scotch Asylums, (1888).—Tact in the Management of the Insane, (1888).—Restriction of Personal Liberty in case of Insane, (1886).

DR. WILLIAM W. POTTER.—Transactions of the American Association of Obstetricians and Gynecologists, (1888).

DR. FRANCOIS SEMAL.—President Societe de Medicin Mentale Belgique.

Des Psycho—Neuroses Dyscrasigies.—BRUSSELS, (1882).

La Folie et le Suicide.—GAND, (1886).

Relations Entre la Criminalite et la folie.—GAND, (1886).

De la Sensibilite Generale—*Paris*, (1876).

(Aubenal prize memoir.)

De l'Utilite et des danges de l'Hypnotisme, Brussels, (1888).

De l'Assistance des Epileptiques, Brussels, (1887).

De la Thermometrie Cephalique, Gand, 1.

Rapport de M. le Dr. Semal Sur le Congres International de Medicine Mentale de Paris.

Du Development Physiologique de l'Intelligence, Liege, (1880).

Societe de Medicine Mentale de Belgique, 4 April, (1872).

De la loi Sur les Alienes, Brussels, (1872).

Analysis of Dr. Magnars, work on Alcoholism, by Dr. Semal.

International Congress of Medical Sciences, First Session Brussels, on Insane and Dangerous Criminals, (1876).

J. P. HENRY COUTAGNE, M. D.—Expertes Medicales en Matiere Criminelle, Lyon. A. Storck. Paris, G. Steinheil, (1888).

MAGAZINES.

GODEY'S LADY BOOK.--Keeps up its interest, and is well illustrated.

LIPPINCOTT'S.--Is improving steadily.

AMERICAN JOURNAL OF INSANITY.--The October number has a fine portrait of Dr. Stephen Smith. The proposed new law as to commitments of insane and an interesting series of papers.

ALIENIST AND NEUROLOGIST.--Dr. Hughes is making this journal one of great excellence and value.

ARCHIVES ANTHROPOLOGIE CRIMINELE (Lyons, France.)--We are glad to chronicle the great success of this new journal in its domain. It announces a large increase in circulation in Italy and in Spanish speaking countries.

JOURNAL OF MENTAL SCIENCE.--The last number gives detailed accounts of the annual meeting of the British Medico-Psychological Association, and speaks in high praise of Scotch-hospitality.

The same editors were again chosen. The leading paper is the Presidential address by Dr. T. S. Clouston at Edinburgh in August last.

ARCHIVES DE NEUROL. AND PHY. (Lisbon.)--We are glad to welcome this new Portuguese journal to our exchanges, and its editor to the corresponding list of the Medico-Legal Society of New York.

REVISTA DE ANTROPOLOGIA CRIMINAL (Madrid.)--The new journal of Criminal Anthropology in Spain is certainly a matter of congratulation to students of forensic medicine. It devotes considerable space to the proposed International Congress of Medical Jurisprudence in New York in June, 1889.

ANNALES MEDICO PSYCHOLOGIQUES.--Its chronique is admirable and besides original papers of great interest, it contains a careful review of the transactions of the French Society Medico-Psychologique from the pen of Dr. Charpentier, and a careful review of the alienist and Neurologist of this country.

ARCHIVES DE NEUROLOGIE.--Still under the editorial control of Prof. Charcot and his illustrious collaborators, is the leading French journal of this science. Each number contains original papers followed by a critique, review of works on nervous pathology, a like review of mental pathology, and a detailed

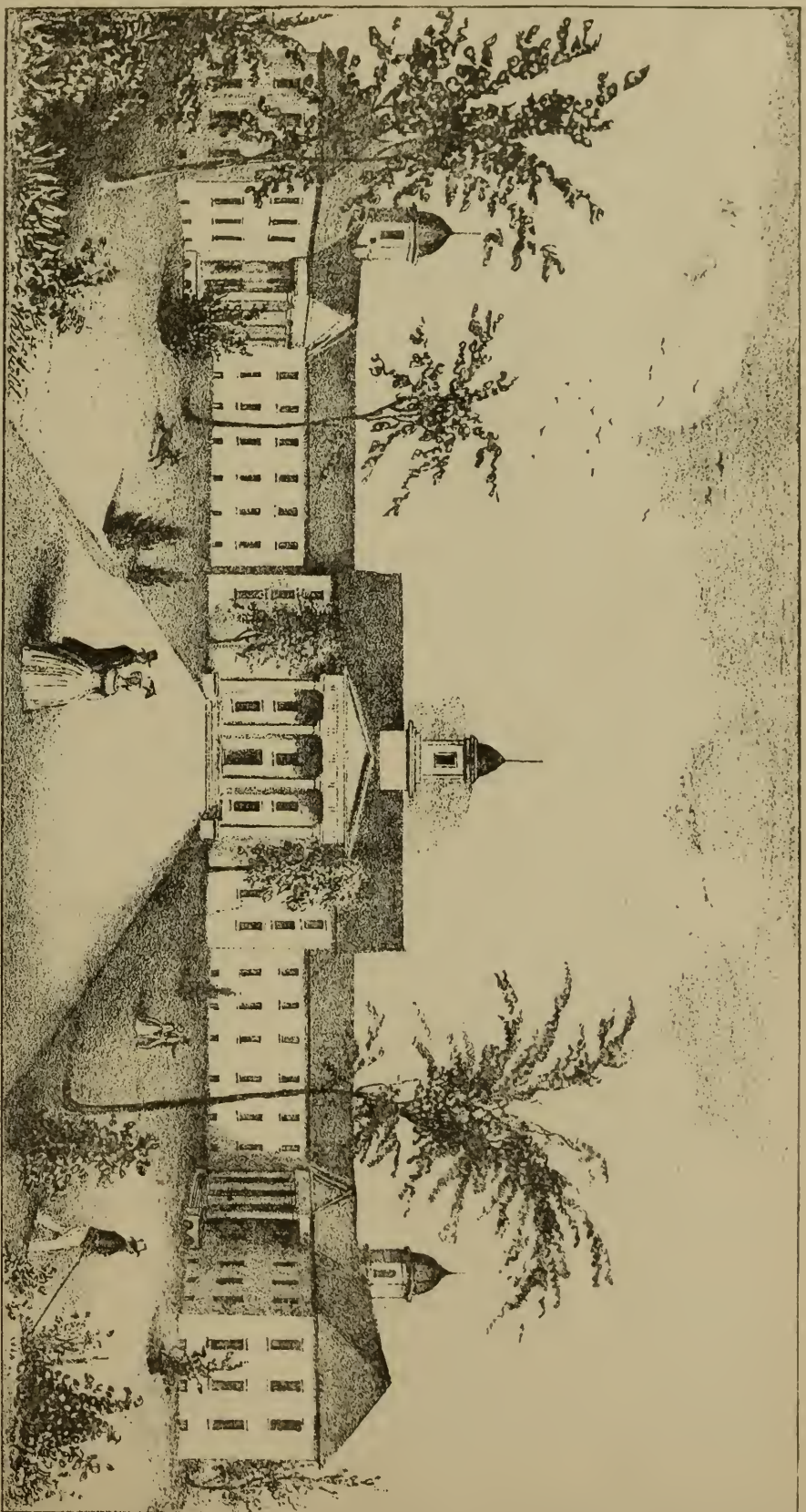
rescript of the transactions of the Society Medico-Psychologique, by Dr. Briand ; of the Society of Alienists of Southwestern Germany, by Dr. Keraval ; and of the Berlin Society of Psychiatry, by Dr. Keraval.

THE BULLETIN OF THE BELGIAN SOCIETY OF MENTAL MEDICINE.— This is the official publication of that body and contains besides its transactions and list of members, the original papers read before the Society, and is a complete record of its labors and work. Dr. Jules Morel is in charge of this publication.

JAMES DUNLAP MONCURE, M. D.

The present Superintendent of the Eastern Lunatic Asylum of Williamsburg, Va., was born in the City of Richmond. He is descended on both sides from the early settlers of the Colony of Virginia, representing the eighth generation born on American soil. At an early age he was sent to Germany, and thence to France, where he received his education. Returning home at the commencement of the Civil War, he entered the Confederate Army and served in it until the surrender of General Lee. Dr. Moncure devoted himself to the special study of mental and nervous diseases. He founded the "Pinel Hospital," near Richmond, Virginia, in 1876. He was elected Superintendent of the Eastern Lunatic Asylum, in 1884, was re-elected in 1885 and in 1887.

He is a member of the Medico-Legal Society, Chairman of the Committee on Nationalization of that body for the State of Virginia, is able, energetic and one of the rising physicians in mental diseases for that State.



ORIGINAL LUNATIC ASYLUM AT WILLIAMSBURGH, VA. DESTROYED BY FIRE JUNE, 1885.

EASTERN LUNATIC ASYLUM OF VIRGINIA.

To the colony of Virginia belongs the honor of having established the first asylum exclusively for the insane. In the year 1768, the General Assembly passed an act organizing this asylum, the first erected by public authority on the continent of America. In 1769 a court of directors was appointed, with power to purchase land to erect a suitable building for a hospital to maintain and care for "idiots, lunatics and persons of unsound mind."

This court purchased a lot of land from Thomas Walker, in the year 1770, and proceeded to build thereon a structure one hundred feet by thirty-eight, two stories high, according to plans furnished by Robert Smith, of Philadelphia, Pa., (it is the centre building in the picture). Much of the material used was imported from England.

The hospital was completed and accepted by the court of directors on Tuesday, September 14, 1773, and it was determined to advertise in the public paper "that the hospital will be ready by the 12th of next month for the reception of such idiots, lunatics and persons of unsound mind, as may be sent thereto, agreeable to the act of General Assembly, and that this court will sit on Tuesday in each week to examine and receive such objects."

The Hospital was put in charge of a keeper, James Galt, who was appointed at that court.

The office of keeper and that of physician was distinct from 1773 until 1841. The keeper had entire charge of the Hospital, and resided on the premises. The physician visited the hospital whenever a patient was received and

then only when sent for by the keeper. The numerous conflicts of authority between the physician and the keeper caused the offices to be united under one head in 1841.

The following is a list of the names of the first court of directors :

Honorable William Nelson, President ; Honorable Thos. Nelson, Jr., Robert Carter, Peyton Randolph ; Robert Carter Nicholas, John Blair, Jr., George Wythe, Dudley Digges, Jr., Thomas Everard and John Tazewell.

These names represent to a Virginian, men of the highest prominence in her colonial history, as well as of the Revolutionary period. Indeed, among the court of directors appointed from time to time, are the best known Virginia gentlemen, often men of wealth and well-known benevolence. We find in the list many distinguished clergymen, such as the Rev. Dr. Camm, Rev. Mr. Bracken and Right Rev. Bishop Jas. Madison. The latter was a member of the court of directors from 1778 to certainly 1801, and he was for many years President of the court.

The first two patients were admitted on Tuesday, October 12, 1773, and at the same court it was "ordered that the keepers of the hospital call in Dr. John Siqueyra, to visit such persons as shall be brought to the hospital, at their first reception and at such other times as may be necessary."

The following is a list of keepers : James Galt appointed 1773, held office until he died, 1801.

Wm. G. Galt, son of former, 1801 to 1826, when he died. Jesse Cole, appointed 1826, resigned in 1826. Dickie Galt, son of former Galt, 1826-1837, when he resigned. Henry Edloe, appointed 1837, resigned 1838. Philip Barzziza, appointed 1838, was the last keeper, and

was elected steward 1841, when office of keeper was merged into superintendent and physician.

List of physicians to the hospital: Dr. John Siqueyra, appointed 1773 to 1795, when he died. Drs. Galt and Barraud, appointed as physician and surgeon at fifty pounds each per annum, from 1795 to 1808, when former died. Dr. Alexander Dickie Galt, son of Dr. Galt, was appointed 1808 to 1841, when he died. Dr. John Minson Galt, son of the latter, was appointed superintendent and physician in the year 1841 and held the office until his death, 1862, a short while after the capture of Williamsburg by the Federal Army. Dr. John Galt Williamson, assistant physician, and a relative of the latter, took charge for a short time in 1862, but soon died, leaving the asylum without a head. The military authorities then took charge until the State was "reconstructed," so-called.

Dr. Leonard Henly was then appointed 1865, when he was removed by Gov. Wells, who appointed another board, when Dr. R. M. Garrett was elected in 1866, the latter, in turn, was removed, and Dr. A. E. Petticolas elected by a military board in 1868; he died in the same year. Dr. D. K. Brower, elected 1869-1876, when he resigned. Dr. Harvie Black was elected 1876 and was removed in 1882, when the State fell in the hands of the Readjuster Republican party. Dr. R. A. Wise was elected 1882 and removed 1884, when the State became again Democratic. Dr. Jas. D. Moncure, the present incumbent, was elected Superintendent in 1884.

In the above list it will be seen: "Thus three eminent physicians, father, son and grandson, (Drs. Galt, Alexander Dickie Galt, and John Minson Galt) have had charge successively of this asylum, and their name an ornament to society, to science, and to humanity, has

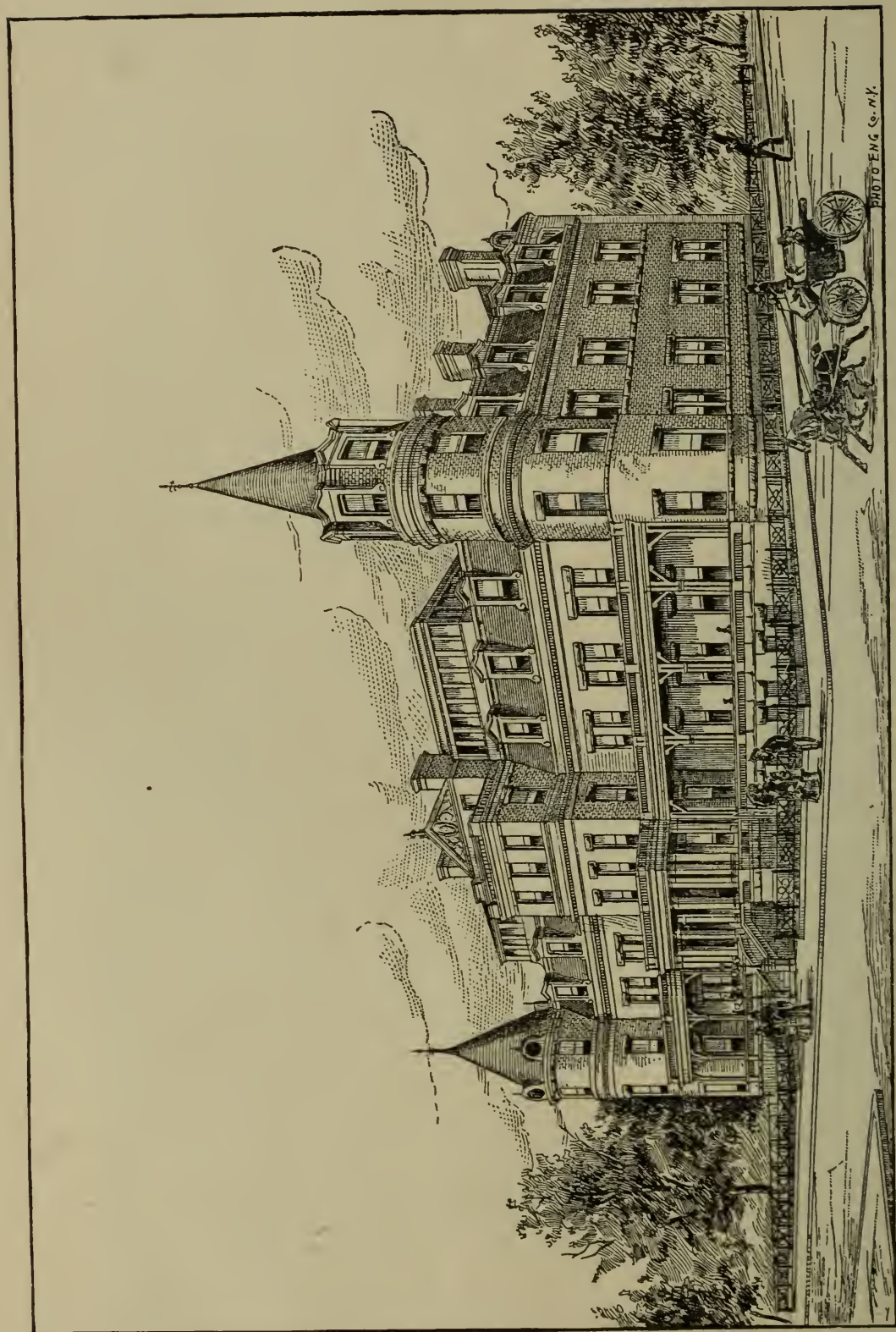
been associated with this hospital since its foundation, in 1773."

The writer of the above, Rev. Dr. Wilmer, in his address at the centennial celebration of this asylum, says of Dr. J. Minson Galt: "He left no son to lament an honored father, and to add, as he has done, new lustre to a noble ancestry. He lives in grateful memory and affection."

The following words of his own composition, form a fitting memorial of his character: "God has given us the desire of fame for the good of our species. True fame, then, resulting from the desire to make our names known by doing some great good, is worthy of being; it is following out the great purpose of our Creator. It makes no difference that we shall be slumbering in the quiet grave, when all that is good to which we have given rise, is accomplished. We have followed out the destined end of our being; we have exercised rightly the talents which have been entrusted to us for the good of mankind."

It will be no surprise to our readers to learn, that while this asylum was constructed long before the announcement of the enlightened and humane views of such alienists as Tuke and Pinel, and therefore had wells for subduing the refractory patients, irons to fetter their limbs, and dungeons to render their escape impossible; yet with the humane and distinguished members of the board of directors, and with superintendents entertaining such views as above quoted from Dr. J. M. Galt, this asylum was not slow in following in the footsteps of Tuke and Pinel. For years the distinctive feature of the Eastern Lunatic Asylum has been to grant to patients the greatest amount of liberty consistent with their personal safety, and to reduce all restraint, mechanical or otherwise, to the minimum.

"The Cottage system" was inaugurated here for the



DR. WILLIAM A. HAMMOND'S SANITARIUM FOR DISEASES OF THE NERVOUS SYSTEM,

WASHINGTON, D. C.

better classification and treatment of the insane, as early as 1841. It has been followed ever since.

It is to be regretted that the original buildings, erected in 1773, were destroyed by fire, June 9, 1885.

The capacity of the asylum at present is about four hundred patients. The female department has not been rebuilt since the fire.

OFFICERS FOR 1888.

President :

CLARK BELL, Esq.

1st Vice-President :

W. G. STEVENSON, M. D.

2d Vice-President :

IRA RUSSELL, M. D.

Secretary :

ALBERT BACH, Esq.

Assistant Secretary :

FRANK H. INGRAM, M. D.

Corresponding Secretary :

MORRIS ELLINGER, Esq.

Chemist :

CHARLES A. DOREMUS, M. D.

Treasurer :

E. W. CHAMBERLAIN, Esq. .

Curator and Pathologist :

THEO. H. KELLOGG, M. D.

Librarian :

CHAS. F. STILLMAN, M. D.

Assistant Librarian :

BENNO LOEWY, Esq.

TRUSTEES.

Legal :

RICHARD B. KIMBALL, Esq.

SIMON STERNE, Esq.,

WILLIAM G. DAVIES, Esq.

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Very Truly Yours.
Seth Hunt, Falcott.

THE WEBBER MURDER CASE IN PHILADELPHIA.*

BY WM. WILKINS CARR,
Of the Philadelphia Bar.

Since the trial of Guiteau, in 1881, there would appear to be a change in public sentiment as to the execution of insane offenders. Modern criminal procedure asserts that society has the right to hang offenders against its laws even though they be insane. In the opinion of alienists, Joseph Taylor, hanged in Philadelphia, in 1884, for the killing of a prison-keeper, was insane; and in the same condition of mind was Dr. L. U. Beach, who, in 1885, was hanged at Hollidaysburgh, Pa.†

Nor is the practice of hanging the insane altogether unsupported by principle; for, assuming it to be true that the study of the disease of insanity during the last century has shown that the punishment of the insane is valuable as a preventive, or protective measure to society, there then follows the right to inflict such punishment upon them as well as upon sane offenders. On

* Read at meeting of June 13, 1888.

† In England the subject has received much attention from the cases of Goldstone and Cole, the former of whom was tried and convicted in September, 1883, in London, for the murder of his five children; but subsequently, a formal inquiry directed to be made by Sir Wm. Harcourt, the English Home Secretary, found that he was insane, and he was reprieved by the Government. The prisoner had drowned three of his children in a cistern and broken the skulls of the remaining two with a hammer. The verdict was guilty of wilful murder. The trial and conviction of James Cole was held in October, 1883, for the murder of his child, aged three years and eight months; but the Home Secretary again ordered a medical examination, which, pronouncing him to be insane, he also was reprieved. See "Madness and Crime," by Clark Bell, Esq., 2 *Medico-Legal Jour.*, page 339.

the other hand, the conviction and hanging of insane defendants conflicts with the other fundamental principle of criminal law, that there can be no "crime" in the absence of proof of a rational motive or intention. Nevertheless, an eminent legal writer has said: "It should not be forgotten, in connection with this subject, that little or no loss is inflicted either on the mad man himself, or on the community by his execution. It is, indeed, more difficult to say why a dangerous and incurable madman should not be painlessly put to death as a measure of humanity, than to show why a man, who being both mad and wicked, deliberately commits a cruel murder, should be executed as a murderer."*

* 2 Stephen's History of the Criminal Laws of England, page 178. See 3 Medico-Legal Jour. 1, for a paper read before the Medical Jurisprudence Society, of Philadelphia, April 14th, 1885, by Clark Bell, Esq., of New York, entitled, "Shall we hang the insane who commit homicides?" in which the subject is discussed and reference made to the cases above mentioned. Mr. Bell says:—"There is much to be said in favor of the public execution of the insane for capital offences, and there can be little doubt that society has the same right to execute insane criminals (if such a term is admissible) if it can be felt that it would tend to the prevention of offences by others, or could be regarded in any broad and strong sense as protecting society from the danger of assaults that threatened seriously its peace or permanent good.

The sane criminal is not executed by operation of law as a punitive, but as a preventive measure; and it is only defensible when, for the greater good of the living, Governments justify themselves in instituting proceedings under recognized forms of law to take human life, even as a *quasi* punishment for crime.

If the public executioner has a restraining influence upon those liable to commit high crimes, if the fear of the scaffold deters the murderer from the awful act; who can say that the sanity or insanity of the homicide effects the moral or restraining power of the scaffold, as a repressive force, in its effect upon the minds of men likely or even liable to commit crime?

Dr. Wm. A. Hammond, the eminent alienist, not long since publicly advocated the execution of Guiteau, of whose insanity he entertained no doubt. He regards the execution of the insane as an important factor in its general influence upon the insane themselves, and claims with great force that these unfortunates are susceptible to restraining influences from the penalties thus inflicted, in which opinion I do not doubt many superintendents of asylums would concur."

It may be said, however, that society at large has not as yet been educated up to the point of looking upon the trial and execution of the insane as being in accordance with sentiments of mercy and humanity, and the unrepealed statutes of many of the States still expressly affirm the common law rule that no insane person shall be hung. But if that rule be changed and the right to hang insane offenders conceded, there then follows, as a corollary, the right in society to put them upon trial.

It is that question which may be said to be raised in the Webber case, in which was thoroughly discussed for the first time in the history of English criminal law the right of a prisoner to have a preliminary trial of his mental condition by a jury before trial upon an indictment.

The facts of the case were as follows:

Oscar H. Webber, upon October 19th, 1887, in Philadelphia, was convicted of murder in the first degree, of William H. Martin, and sentence of death pronounced upon October 29, 1887.

His antecedents and prior life were reputable. His father, Anthon Webber, was a native of Einsiedel, Chemnitz, Saxony, where the prisoner was born, lived with his parents until 1873, when he came to Philadelphia. Anthon Webber had been a well-to-do merchant in Chemnitz, a celebrated woolen manufacturing town, but failed in business in 1866. Until he became insane the prisoner was the chief means of pecuniary support of his parents and sister, having learned the trade of machinist in Chemnitz, and being nineteen years of age when he came to this country. His mother is still living, but his father died in 1882, in a state of *senile dementia*, in the sixty-seventh year of his age. The next younger brother, Otto E. Webber, is a photographer,

now residing in Lancaster, Pennsylvania, and came to this country in 1878. His parents, sister Amelia and a brother Paul were brought to this country by the prisoner in 1882. The sister is subject to *hystero-epilepsy*, and Paul is a machinist in Philadelphia. The prisoner's life, until after the fall of 1885, when he became insane, was free from criminal influences or associations.

In the fall of 1885, however, evidences of mental derangement were noticed by his employers, relatives, and friends, from a change of character, and disposition upon the trial. His wife testified to his insane suspicions of her fidelity. He suspected that she chloroformed him, and that when the effect of the drug was upon him, received visits from her lovers. He believed that he was pursued and persecuted by her and others who wished to kill him. He became surly, morose, and suspicious of his fellow-workmen and of his brothers, especially of Paul, who was living in Philadelphia. He no longer was a steady workman at his trade, but in the fall of 1885, dropping his old occupation, in which he had acquired reputation and skill, and in which he had made money, he attempted to pursue several business schemes in which he had no experience whatever. On January 31, 1886, he went with his wife to live at 1211 Mosely Street. From that time mental derangement became most marked. He was idle and improvident, rude and surly to his mother, brutal to his wife, and threatening to his brothers. His health became impaired and he was subject to insane sensations of sight, hearing, and touch. His family physicians, Dr. Lamparter and Dr. Githens, and also Dr. Schrotz, the physician of his employer, Mr. Müller, testified that he was insane. The same opinion was given by his former employers, his friends, and relatives.

In September, 1886, his wife, acting upon the advice of Dr. Githens, the family physician, left their home and went to live with her father, resuming work at her trade.

Seventeen witnesses, not including expert testimony, were called upon the trial, who testified to the fact of his insanity.

Upon December 6, 1886, Webber shot and killed William H. Martin, a jeweller, No. 1311 South Street, about three o'clock in the afternoon, in his shop, in the presence of Martin's wife and daughter.

There was no sane motive whatsoever.

The details of the killing and the circumstances, all tended to show his insanity.

When arrested and taken before a magistrate, he admitted the killing. The only witnesses called by the Commonwealth to rebut the overwhelming evidence of insanity were the police officer who made the arrest, the magistrate who committed him, a turnkey, the police lieutenant of the district, and the deputy coroner who held the inquest. Each of these witnesses saw him for a few moments only and testified to his self-possession and calmness, and formed the opinion from this fact alone, and without knowledge of the man's prior history, that he was sane.

From December 6, 1886, until October 17, 1887, the day of the trial, the prisoner was in the Moyamensing County Prison, and refused to consult with, or receive the visits of his mother, wife, children, brother, friends, former employer, Mr. Müller, or the counsel appointed by the Court to defend him.

The last interview with him was upon Wednesday, October 12, preceeding his trial fixed for the following Monday, October 17. There were present Drs. Lloyd

and Mills, one of the counsel, Dr. Butcher, the prison physician, and another gentleman. Upon the trial it was testified by Drs. Mills and Lloyd that he was then insane, and incompetent to understand the nature of the legal proceedings being taken against him. The facts of that interview were given in detail, and were undenied. The Commonwealth did not call Dr. Butcher to rebut them, nor the other gentleman who was also present; nor any other person connected with the prison to say that it was a case of simulated insanity, although the prisoner was in confinement for a period of ten months.

Webber was first arraigned upon January 5, 1887, and refusing to answer directly, the clerk entered a plea of not guilty, according to the provisions of an act of assembly. Subsequently counsel were assigned to defend him by the Court, who, after consultation with his friends, and interviews with the prisoner, were of opinion that he was insane, incompetent to plead, or to understand legal proceedings.

Immediately, upon February 1, 1887, a motion was made to the Court, on behalf of the prisoner, to withdraw the plea of not guilty, and to proceed under the provisions of the Criminal Code of March 31, 1860, Sec. 67, 1 Purdon's Digest, page 392, Sec. 72, which provides, "The same proceeding may be had if any person indicted for an offence shall, upon arraignment, be found to be a lunatic, by a jury lawfully impanelled for the purpose."

The motion of counsel to withdraw the plea of not guilty was granted.

Subsequently, upon October 17, 1887, the record standing without an issue of any kind whatsoever framed upon it, the case was called for trial.

Counsel immediately filed a motion for a stay of proceedings until the question of insanity be determined under the act of June 13, 1836 (P. L. 592), providing for the ordinary inquisition in lunacy. The motion was refused and therefore they moved for a preliminary hearing upon the question of present insanity, under the act of March, 1860, Sec. 67, and filed of record a plea or suggestion in the nature of a dilatory plea in abatement of the action in a civil suit, that the prisoner was insane and unable to plead.

Their motion having been refused by the court, upon the ground that it was a matter within judicial discretion, counsel offered to produce witnesses *viva voce*, or affidavits in support of the averment of insanity contained in the plea filed, and so inform the judicial discretion. This motion was also refused.

No witness was called by the Court, nor the District Attorney, to inform judicial discretion. In the subsequent opinion of the Court in overruling the motion for a new trial, and in arrest of judgment (44 Phila. Leg. Int. 430), the Court say, "I had also the benefit of the information of the physician of the prison, and others to assist me in coming to that sound judgment which it was my duty to exercise."

Who these persons were, or when they were examined, or whether they were sworn, or who examined them, was not made public. The Court did not inform its judicial discretion by the production of witnesses in open court.

In the opinion referred to the Court also say, "Nearly two hours were occupied in arguing and considering the motion, during which time I had the opportunity of observing the appearance and conduct of the prisoner, and the attention he gave to the proceedings."

During the time mentioned, Webber was in a dock, at a distance from the Bench at least of fifty feet, and in front of the dock is a heavily ornamented iron railing, so that it was impossible for the Judge to arrive at any conclusion as to his mental condition, inasmuch as he was seated behind the iron railing, impassible and silent, and no personal examination was made.

Thereupon the Court, deciding against the fact alleged of insanity, ordered him to be arraigned, and the indictment was read to him, and being asked to say whether he was guilty or not guilty, answered : "I do not consider it necessary for me to do so. I do not consider myself guilty of anything at all."

It was an indirect answer, and the plea of not guilty should have been entered as under the statute, but the Court directed it to be entered simply as a plea of not guilty.

The witnesses called to show insanity were the prisoner's former employers, Messrs. Muller and Heath ; Dr. Schartz, who had prescribed for him at Mr. Muller's request ; Drs. Lamparter and Githens, his former family physicians ; Jos. C. Winhostein, an acquaintance ; the prisoner's two brothers ; his barber, mother, wife, several women who had formerly been employed in the same establishment with him ; a woman with whom he had boarded, and a neighbor. These witnesses, other than his immediate relations, had known him for different periods of time, between fifteen and one or two years, and had been during the time they had known him constantly brought in contact with him. Two medical experts also, Drs. Lloyd and Chas. K. Mills, testified as to his insanity.

The evidence on behalf of the Commonwealth in rebuttal of that of insanity was that of Deputy Coroner

Thomas J. Powers who thought him sane, but vicious, bad-tempered ; Magistrate William H. List, who also thought him sane. Special Officer Murray, who also thought him as sane as any man he ever spoke to, said his manner was very quiet and self-possessed. "Talked to me like any other prisoner. I have talked to a great many that talk like him." Lieutenant Skilton, who testified : "I am the lieutenant of that district, and was present when the prisoner was brought in. I heard the questions asked him, and ordered him searched. I saw no insanity. I took particular notice. He never moved a muscle. He had a full box of cartridges in his packet. He answered questions like other people."

The Commonwealth in its argument to the jury upon the facts intimated that it was another case of simulation of insanity on the part of a vicious and bad-tempered man to escape the just punishment of the law ; and in its application of the legal rules as to insanity as a defence for crime, the Court charged the jury that as the evidence had not shown that the killing was done in the line, or as the effect, of any insane delusion, the plea of insanity was not a defence.

But it will be observed that the questions raised by the record, preliminary to everything else, was of the prisoner's mental capacity to plead, challenge and defend himself by proceedings concerning his life.

A verdict of guilty of murder in the first degree was, however, returned, and subsequently a motion for a new trial and an arrest of judgment was overruled and judgment pronounced.

A writ of error was therefore taken to the Supreme Court, assigning for error, *inter alia*, the refusal to allow the preliminary issue upon suggestion filed before and

after the plea of "not guilty" was entered ; the refusal to allow counsel to produce witnesses, *viva voce* or affidavit, to inform the judicial discretion in its decision upon that suggestion ; that the judicial discretion was informed from sources not made public ; that the prisoner was arraigned when there was upon record a suggestion of insanity undisposed of by a jury ; and that the trial and conviction was against the law of the land, the prisoner being insane when called upon to plead.

It was also argued before the Supreme Court that the disregard of the suggestion or information filed by the Court of the insane condition of the prisoner, nullified the constitutional provision that he is entitled to the assistance of counsel. The knowledge of the fact of insanity was confined alone to his counsel or his friends, and when the suggestion was filed he was most in need of the assistance of counsel, being at that stage of criminal procedure when he was about to be put into jeopardy.

The Supreme Court afterwards, upon March 19, 1888, affirmed the judgment of the lower Court, and in its opinion says :

Opinion by GREEN, J., March 19, 1888.

The question principally discussed in the case is a novel one. It does not appear to have ever been determined or even presented in this court before.

Briefly stated it is this: Whether a defendant in a criminal case who alleges his insanity at the time of arraignment, is entitled, as a matter of legal right, to have a separate, independent and preliminary trial of that question by a jury specially impanelled for the purpose. It is certainly the fact that the 66th and 67th sections of our Criminal Code of 1860, are substantially, almost literally, taken from the English Statute of 39 and 40 Geo. III., 94, and that, under that statute, the English Criminal Courts do, not infrequently, award preliminary issues to determine the sanity of prisoners by the verdict of a jury. The same is true of the practice in several of our sister States. We have examined with much care the various authorities cited in the very able and exhaustive argument of the learned counsel for the plaintiff in error, and we find that in all of them the inquest was directed, generally by the Court of its own motion, and sometimes at the instance of the Attorney-General, but always in cases where the appearance

and actions of the prisoner were such as to manifestly indicate a condition of insanity either real or simulated. In point of fact, the purpose of the inquiry was to inform the conscience of the Court as to the prisoner's real condition at the time of the trial, but before the trial proceeded. There was an obvious propriety in directing an inquiry by the verdict of a jury in all such cases, because the fact itself required determination before any further proceedings were had, if there was probable ground for belief that a condition of insanity existed. If, upon an examination of the prisoner, there was no apparent reason to suppose him insane, but, on the contrary, he seemed quite capable of pleading to the indictment, there was no necessity for a preliminary trial, because every right to set up insanity, either when the offence was committed or at the time of the trial, still remained, and could be thoroughly tried by the jury who were to try the indictment.

The existence of the doubt as to the prisoner's present insanity is a matter which, by the very necessity of the case, could only be determined by the court itself. Up to the time of pleading there is no other tribunal which has the prisoner in charge, and there is no other which can say whether there is a doubt upon that subject. It is one of the functions which must be entrusted to the court, and it is not to be presumed that it will in any case be abused. If it should be, there is still the remedy available in all cases where abuse of discretion has taken place.

In the case of *Freeman v. the People*, 4 Denio, 9, cited for the plaintiff in error, the question arose upon a section of the code which provides: "No insane person can be tried, sentenced to any punishment or punished for any crime, while he continues in that state." The Court said: "The statute is explicit that 'no insane person can be tried,' but it does not state in what manner the fact of insanity shall be ascertained. That is left as at common law, and although, in the discretion of the Court, other modes than that of trial by jury may be resorted to, still in important cases that is regarded as the most discreet and proper course to be adopted.

In the case of *Jones v. The State*, 13 Ala., 157, the Court said: "But in the case before us the judge did not see proper to test the prisoner's sanity by a preliminary inquiry to ascertain whether he was capable of pleading to the indictment or not. He did plead, and a trial and conviction was the result. Although we are of opinion that the facts disclosed in the bill of exceptions might well have warranted the preliminary inquiry as to the prisoner's mental condition, yet this must be left to the sound discretion of the Court below."

In *State vs. Arnold*, 12 Iowa, 433, the Court said: "The Court is to inquire into the prisoner's mental condition at the time he appears for arraignment. In determining whether a reasonable doubt exists as to his sanity before empanelling a jury, the judge is not confined alone to the case made by the counsel * * * but may, in his discretion, investigate the whole matter, and determine whether the necessity exists for the inquiry. But the inquiry should not be allowed if, from all the circumstances, he has no reason to doubt his sanity." The foregoing was said in construing a statute in the State of Iowa, which provided that there should be no trial if there was a doubt whether or not the prisoner be insane.

In *Hawkins' Pleas of the Crown*, 3, the writer says: "And by the com-

mon law, if it be doubtful whether a criminal who, at his trial, is in appearance a lunatic, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff of the county wherein the Court sits."

The foregoing are the only text books and reports of cases which we have met with, in which the subject we are considering has been discussed or decided, and they all concur substantially in the proposition that it is only in cases of doubt as to the sanity of the prisoner upon arraignment, that a preliminary inquiry is to be ordered. This being so, it is manifest that neither the assertion of the prisoner or his counsel, nor, the production of affidavits, nor the entering of a plea of present insanity upon the record, can of themselves alone suffice to produce the state of doubt, which is a necessary prerequisite to the ordering of the inquiry. They are all necessarily addressed to the Court, and there is no other tribunal to entertain them. and it is the Court, after all, which must be affected by the various considerations which are supposed to, or in fact do produce the doubt which must precede any order for an inquiry. It follows, of course, that other considerations than those stated may affect the judicial mind and induce the existence of a doubt. A personal inspection of the prisoner, an examination of him, whether public or private, inquiry from an attending physician, or from those around the prisoner who have means of knowledge.

All of these, and doubtless other facts or testimony, may contribute to the creation of doubt in the mind of the judge, and, for that reason, all may be resorted to, but if, after all have transpired, the judge has no doubt of the prisoner's sanity, he is neither bound, nor would he be justified in ordering an inquest. It is the judicial conscience alone which can determine this question. And it is that conscience only which must be informed so that it may act intelligently. These views dispose of the question. The absolute right of the prisoner to have the question of his sanity tried by a jury is not at all affected.

The judgment of the Court of Oyer and Terminer of Philadelphia County was affirmed, and it is ordered that the record be remitted to said Court for the purpose of carrying the sentence into execution.

A dissenting opinion was, however, also filed by STERRETT, J., as follows:

"Being in accord with a majority of my brethren, except as to certain specifications of error which in my humble opinion imperatively demand a reversal of the judgment, I propose to address myself, as briefly as possible, to the general question involved in those specifications, viz.: Did the learned judge of the Oyer and Terminer err in either of his rulings relating to the application of prisoner's counsel for a preliminary inquiry, such as is contemplated by the first clause of the 67th section of our Criminal Procedure Act, to determine 'by a jury lawfully impanelled for the purpose,' whether the prisoner was, at the time of his arraignment, a lunatic or not?

If it were not for what I conceive to be manifest error in the rulings of the learned judge in that regard, especially his refusal to even hear any evidence in support of the application, I would be in favor of affirming the judgment; but, with these radical errors patent upon the face of the record, resulting, as I believe, in an improper conviction of the prisoner, who, according to the weight of evidence, was insane when he was compelled

to plead to the indictment, and probably in the same condition of mind when he committed the homicide, I am constrained to dissent and put on record my reasons for so doing.

I have no sympathy whatever with the pettifogging and groundless defences of insanity that are too often interposed to shield the guilty from merited punishment ; but the case at the bar is not one of that class, as the evidence, which the learned counsel, by their diligence, unaided by the prisoner, were able to adduce on the trial, will show. That evidence tends to prove that, before the marked change in his mental condition occurred, and he became the victim of delusions, the prisoner was peaceable, industrious and thrifty ; a kind and affectionate son, husband and father, exemplary in all the relations of life."

The learned judge then gave copious extracts from the evidence, showing his insane conduct and action, and observed:

This is the general character of the evidence with which prisoner's counsel were prepared to support their application for a preliminary inquiry as to his insanity at the time he was arraigned, and the kind of evidence the learned judge resolutely refused even to hear, either in the form of affidavits or by examination of the witnesses in open court. If that was an exercise of sound judicial discretion, it would be difficult indeed to say what, in a legal sense, constitutes abuse of discretion.

The 66th section of the Act referred to provides for cases in which the jury, by their verdict, finds specially that the prisoner was insane when he committed the crime charged in the indictment, and is acquitted by them on the ground of such insanity, and empowers the Court to order him to be kept in close custody so long as he shall continue to be of unsound mind.

The first clause of the next section under which the application in question was made, provides : " The same proceedings may be had if any person indicted for an offence shall, upon arraignment, be found to be a lunatic by a jury lawfully impanelled for the purpose. The last clause of the same section provides for the case of a prisoner who has gone to trial without such preliminary inquiry as is contemplated by the first clause. If the jury find by their verdict that he is then insane, the court shall direct such finding to be recorded, and order him to be kept in close custody, &c.

These provisions, substantially copied from the English Act 39 and 40, Geo. III, Chap. 94, were first enacted by our Legislature in 1836, and afterwards embodied in our Criminal Code of 1860. It is conceded the English courts frequently award preliminary issues to determine, by the verdict of a jury, the sanity of prisoners when arraigned on indictment, and the same practice prevails in several of our sister States whose legislation on the subject is similar to our own. * * * * *

Granting that it is discretionary with the trial judge to award or refuse the preliminary inquiry contemplated by the first clause of the 67th section, above quoted, it must, of course, be understood to mean a sound, legal discretion, not an arbitrary or unreasonable exercise of judicial power ; nor can it be the preconceived opinion, however strong, of a judge who refuses

to hear evidence tending to show that the application is meritorious and not frivolous. If it is the "judicial conscience alone" that must be enlightened so that it can act intelligently, it would seem to follow that affidavits and oral testimony of witnesses in open court, calculated to shed light on the subject, should not be waived aside as unworthy of even being heard. That is substantially what was done in this case, as abundantly appears by the bill of exceptions.

The case of Webber indicates how far modern criminal procedure has escaped from the common law rule that no insane person shall be tried, sentenced or hung. One of the earliest writers is Sir Edward Cooke (1550-1634), when the character of the criminal procedure of his time is, perhaps, illustrated by the familiar trial of Mary Queen of Scots, who was condemned in the obscure castle of Fotheringay in 1586. The judgment was rendered against her by a commission which was without legal authority to deprive a prisoner of life, and composed of Lord Burleigh and other ministers of the Crown. No notice was given her of the intended trial and examination nor counsel procured to defend her, and the proceedings were conducted without the observation of the most ordinary forms of a trial. In 1592 Lord Coke was in Parliament with the reputation of being a high prerogative lawyer, and afterwards, with coarseness and unfeeling abuse, as attorney-general to Elizabeth, in 1600, conducted the trials of Essex and Southampton in Westminster Hall, for high treason. So also in the famous trial of Sir Walter Raleigh, in 1603, for high treason.

His savage temper, unchecked by the Court, gave occasion to scenes of brutality unequalled in the reports of the State trials. Yet in writing upon the chapter of "High Treason," about the year 1625, Lord Coke said :*

* 3 Inst., fig. 4.

A man that is *non compos mentis*, or an infant within the age of discretion is not (*un homo*) within this Statute, for the principal end of punishment is, that others by his example may fear to offend, *ut poena ad paucos, metus ad omnes perveniat*; but such punishment can be no example to madmen or infants that are not of the age of discretion. And God forbid that in cases so penal, the law should not be certain; and if it be certain in case of murder, and felony, *a fortiori*, it ought to be certain in case of treason.

If a man commit treason or felony and confesseth the same, or be thereof otherwise convict, if afterwards he become *de non sane memorie* (*qui potitur exilium mentis*), he shall not be called to answer; or if after judgment he become *de non sane memorie*, he shall not be executed, for it cannot be an example to others.

In the political and religious persecutions of the reigns of Charles II. and James II., this rule was followed, which was supposed to recognize humane sentiments in not permitting insane persons to be put upon trial for their lives; and criminal procedure as administered by Hyde, Scroggs, Kelyng and Jeffries respected it. even in times when witnesses, in giving their testimony, did not confront the prisoner, when the originals of documents were not required to be produced, and when there was no indictment nor right of appeal. Sir Matthew Hale who, at Suffolk, in 1665, in accordance with the law of the age, presided over the trial and condemnation of an unfortunate woman, accused of witchcraft, afterwards states the rule in the following language: **“If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy, but be remitted to prison until that incapacity be removed; the reason is, because he cannot advisedly plead to the indictment; and this holds as well in cases of treason, as felony, even though the delinquent in his sound mind was examined and confessed the offence before his arraignment.”*

* Pleas of the Crown (1680), p. 35.

The first reported preliminary trial of insanity* was in 1685, and so oppressive was the criminal procedure of the date that during the trial of Lord Russell his wife was driven from the court-room by the tipstaves because she persisted in prompting her husband how to cross-examine one of the informers used by the Crown to show that he was committing perjury.

Another common law authority says :† “By the common law, if it be doubtful whether a criminal who at his trial is in appearance a lunatic, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff of the county wherein the Court sits ; and if it be found by them that the party only feign himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute.”

Afterwards in 1765 Blackstone announced the rule in the following sentence :‡ “Also, if a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried ; for how can he make his defence ? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced ; and if after judgment he becomes of non-sane memory, execution shall be stayed ; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution.”

And again in 1790 || the right to a preliminary trial was

* Charles Bateman, 11 St. Tr. 473.

† 1 Hawkin's P. C., p. 3.

‡ 4 Blackstone, 24.

|| Rex. Frith 22 St. Tr. 310.

applied ; and ten years later the common law rule that no insane man shall be put upon trial appeared upon the English Statute Books in the Act of 39 and 40 Geo. III. c. 94, the history of which is as follows : In May, 1800, the attempt was made by Hadfield to shoot King George the Third, in Drury Lane Theatre. He was tried in June, 1800. Lord Chief Justice Kenyon presided ; and among the counsel for the Crown, were Attorney-General Sir John Mitford, afterwards Lord Redesdale, Solicitor-General Sir Wm. Grant, and also Mr. Law, afterwards Lord Ellenborough. Among the counsel for the prisoner were Lord Erskine and Serg. Best. *

The evidence of insanity having been presented on the trial, the prosecution was abandoned, and the jury was directed to acquit the prisoner on the ground of insanity. A discussion then arose (the prisoner, Hadfield, having been shown to be a lunatic with homicidal impulse) as to what should be done with him. It was doubtful if at common law there was jurisdiction in a Court of Oyer and Terminer to confine a prisoner after acquittal, even if insane. Therefore, to meet the difficulty, on June 30, 1800, in the House of Commons, an act was introduced by the Attorney-General, Sir John Mitford, which became known as the "Insane Offenders' Bill," the debate upon which was taken part in by Mr. Pitt,† and which became the 39 and 40 Geo. III. c. 94 (28 July, 1800), the second section of which reads as follows :

"SEC. 2. And be it further enacted, that if any person indicted for any offence shall be insane, and shall, upon arraignment, be found so to be by a jury lawfully impanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment, to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid to direct such finding.

* See *Rex vs. Hadfield*, 27 St. Tr. 1282.

† See 35 Hansard's Parl. Hist., p. 386.

to be recorded, and thereupon to order such person to be kept in strict custody until His Majesty's pleasure shall be known ; and if any person charged with any offence shall be brought to any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be impanelled to try the sanity of such person ; and if a jury so impanelled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until His Majesty's pleasure shall be known ; and in all cases of insanity so found, it shall be lawful for His Majesty to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to His Majesty shall seem fit."

The preamble and first section of the Act are as follows :

WHEREAS, persons charged with high treason, murder, or felony may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or may be charged, and by reason of such insanity may have been or may be found not guilty of such offence, and it may be dangerous to permit persons so acquitted to go at large. Be it therefore enacted by the King's most excellent Majesty, by and with the consent of the lords, spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, that such person was insane at the time of the commission of such offence, and that such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity ; and if they shall find that such person was insane at the time of committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until His Majesty's pleasure shall be known ; and it shall thereupon be lawful for His Majesty to give such order for the safe custody of such person during his pleasure, in such place and in such manner as to His Majesty shall seem fit ; and in all cases where any person, before the passing of this act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried and still remains in custody, it shall be lawful for His Majesty to give the like order for the safe custody of such person during his pleasure, as his Majesty is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

This act is the foundation for the legislation upon the subject of insanity in relation to criminal law. Its

provisions have been substantially repeated in almost all of the American States.

Their respective statutes provide both for the trial of the question of ability to plead before the prisoner is put upon trial for the crime alleged, and also for the determination of the question of insanity after conviction in order to prevent execution. In the majority of the States the mental condition, either before or after trial, is determined by a jury, but in five: Iowa, Minnesota, Massachusetts, Michigan, and New York, it is passed upon by a commission of experts appointed by the Court.

The repeated and fruitless efforts made by Webber's counsel to inform the conscience of the Commonwealth of the prisoner's insane condition, lest a defenceless man should be put upon trial for his life, appear in the opinions of the Supreme Court to which reference has been made (which are too lengthy to give in full in such a paper as this). It is noticeable that the provisions of the American statutes, copied from the Act of Parliament referred to, require much less effort. In some States if it shall appear to the Court that the prisoner is insane, the proceedings to determine the question shall thereupon be taken.*

In others, notice in writing need only be given by any citizen to the sheriff or jailer, and he shall forthwith summon a jury to try the question.†

Again, if he shall appear to be insane from the certificate of the grand jury or otherwise.‡

Or, if the Court shall be of opinion that there are reasonable grounds to doubt his sanity.§

*Maryland. Michigan. New York. New Jersey.

†Ohio. Iowa. Texas.

‡Virginia Code, 1873. Ch. 201. Sec. 14. West Virginia: R. S. 1879. Ch. 54. Sec. 13.

§Arkansas, 1883. 1838. Kentucky. Iowa. Virginia. West Virginia.

Or, if a doubt arises as to the sanity.*

Or, if it shall be suggested to the Court.†

Then, in any of these cases, the preliminary issues shall be decided.

In Minnesota, the opinion of warden of prison or board of inspectors.

And in Ohio, the certificate of reliable physicians is all that is necessary.

* California : Code of 1876, Sec, 14. 368. Dakota. Idaho. Utah.

† North Carolina. Ohio. Wisconsin.

THE "RIGHT AND WRONG" TEST OF INSANITY.

Its Untrustworthiness Aptly Illustrated in the Case of
THE PEOPLE OF MICHIGAN VS. REINER.

BY T. R. BUCKHAM, M.D., Flint, Michigan.

One night, about six months ago, a horse, buggy and harness were stolen from a farmer in Genesee County, Michigan.

The several articles were traced, and subsequently it was proved that they had been taken and disposed of by the Rev. Christian Reiner, who resided about thirty miles from the place from which the property was taken. Reiner was arrested and lodged in Genesee County Jail.

Considerable cunning was shown to have been exhibited by Reiner in taking and disposing of the articles stolen.

From the assertion made by the prisoner that one of his *lungs* was *sponge*, and from eccentricities observed in his behavior, the Prosecuting Attorney, Hon. Ed. S. Lee, directed the writer and another physician to examine said prisoner as to his mental condition. No reliable evidence either for or against hereditary insanity could be obtained. Both physicians undertook the task expecting to find an educated, intelligent man feigning insanity to shield him from the penalty due him for theft, but after a few visits and careful examinations of the prisoner, both physicians became fully convinced that Reiner was not legally responsible by reason of insanity.

To guard against the possibility of error in their diag-

nosis, however, the visits and examinations were continued, at intervals, for six weeks, until the time of the trial, the prisoner all the while indignantly repudiating the allegation that he was insane.

During the trial, which, viewed from the legal standpoint, was a fair one, the taking and disposing of the stolen goods were clearly traced to the prisoner, his only defence being insanity conducted by J. H. Hicock, Esq. The Prosecuting Attorney himself, satisfied that in a *general sense* Reiner was not sane, very fairly and ably presented the case, but being hampered by the *definition of legal insanity*, as promulgated by the Supreme Court of this State, "that if the prisoner at the time of doing the act, comprehended the nature of the act he was doing, and could distinguish between right and wrong, and that the act was wrong, he must be held guilty," urged Reiner's conviction on the ground that his mental aberration did not amount to legal insanity, tried by the legal test of this State.

Previous good character and conduct, both as a man and as a Christian minister, were established for Reiner until 1886, at which time he had voluntarily resigned his pastorate and his position in the Synod as a minister. The physicians who had examined him both testified that he was not now legally responsible because of insanity, nor was he at the time the goods were taken.

Under the ruling of the Supreme Court, the charge of the trial Judge, Hon. Wm. Newton, was a fair one, but he, too, had to insist upon the "right and wrong" criterion, of insanity, according to the ruling of the Supreme Court. The jury returned a verdict of *guilty*, the only one that could reasonably have been expected under the interpretation of the law as charged by the Judge.

Mark the sequel:—Under the legal test of insanity

as promulgated by the Supreme Court of this State, Christian Reiner, after a fair trial, was declared a horse-thief, was declared not insane. His avocation had been a teacher of religion, a minister of that Christianity which says "Thou shalt not steal," and if he was sane he certainly deserved the full penalty of the law for the crime of which he had been convicted; but instead, prompted by humanity, the Judge delayed passing sentence from day to day until the last day of term, and then further postponed passing sentence till the November Term, urging the Sheriff to use the prisoner well in the meantime.

Sheriff McCall had testified at the trial that he thought Reiner "somewhat out of his head," off his mental balance, "odd," "eccentric," etc., and he at once gave a startling effect to the recommendation of the Judge by allowing him the freedom of the jail-yard, which has no wall around it, indeed is only *partly* enclosed by a picket-fence, and the gates, where there is a fence, are never fastened. Truly a marvellously generous treatment of, and an equally marvellous confidence in *a sane convicted felon*! Possibly it is of little importance that the Judge, Prosecuting-Attorney and Sheriff, all believed Reiner to be insane in every sense but a legal one. They forgot, however, that as a matter of *fact* a man is either insane or he is sane, and "that cannot be *true in law* which is false in fact." They appear to think that the legal test of insanity, untrustworthy as it has been shown to be, time and again, must be maintained, and in its maintenance it seems to be unimportant whether it is *true* or *false* in FACT.

For about a week Reiner was allowed the freedom of the jail-yard, but then the Sheriff had to abridge his liberty, not because the convict had made any attempt to

escape, notwithstanding the facility afforded, but because he, the Sheriff, thought it unsafe for him to be at large, and yesterday he made application to the Judge of Probate, Hon. H. R. Lovel, to have him sent to the Eastern Michigan Asylum for Insane. The experts who testified before the Circuit Judge were again called by the Judge of Probate, but this time only *pro forma*, as poor Reiner's pitiful case did not now require the "special skill" of the expert to determine his condition. It was abundantly evident to the Judge, court-officers and spectators that Reiner was insane, and the prayer of the Sheriff's application was immediately granted, and to-day Reiner is an inmate of the Eastern Insane Asylum, *notwithstanding the fact that, tried by the "tests" of our Supreme Court, HE IS NOT INSANE.*

The record of the above case, in the light of science, is painfully humiliating to the jurisprudence of insanity of our State. Both the judges mentioned are sworn to faithfully administer the law, *id est*, to administer the laws as interpreted by the Supreme Court of this State, and yet both of these upright, conscientious judges, *impelled* by the promptings of humanity, have either tacitly or actively aided in violating the law which they were sworn to faithfully administer, by sending a *sane felon* to an *Insane Asylum* instead of to a criminal prison, and all this, lest the legal fiction, incorrectly pronounced to be a true test of insanity by the Supreme Court of the State, should be repudiated as only less vicious than unscientific and absurd.

*SHOULD INEBRIATES BE PUNISHED BY
DEATH FOR CRIME?**

BY T. D. CROTHERS, M. D., OF HARTFORD, CONN.

It is a common error to suppose that law and its practice, and the facts and theories of science generally accepted to-day, are final and fixed truths. The fact is not often recognized that theories, creeds and laws, and their application to the events of life, are only human conceptions of truth. Hence the demand for change and readjustment of the relations of life to conform to the new truths and new facts constantly appearing. Whenever human conduct, thought, and law fails to adapt itself to these new conceptions of life, great injury and loss follow.

The treatment of insanity, medically and legally, has totally changed from the past century. A better knowledge of such cases has demanded an adjustment of theory and practice to conform to the new views. The armies of the lawless and defective are no longer concealed by the fogs of superstition. Their origin and march are growing more and more distinct with every advance of the age. The hosts of the insane have been outlined and traced ; the idiot has appeared as a growth from distinct causes ; the epileptic has emerged from the theory of being possessed with an evil spirit ; criminals are found who are not deceitful and desperately wicked, but the direct products of conditions of life and living ; the inebriate, who for ages has been the subject of ridicule and punishment, comes into view as defective

* Read before the Medico-Legal Society, September, 1888.

and diseased. Thus from the front lines of advance come new facts, new views, requiring new laws, new adjustments of the theory and practice of yesterday to meet the clearer, wider knowledge of to-day. The farmer must put aside the old implements of his fathers; the merchant must use the telegraph and telephone because correspondence is too slow; the practice of the courts, the theory and treatment of diseases, the teaching from the pulpit, are all changing. The spirit of the age questions and demands reasons for the theories and practices of to-day. It inquires if our methods and theories are destructive or obstructive in the race march from the lower to the higher. My purpose is to show that the death penalty, as a means of punishment for inebriates, is opposed by all teachings of science and experience, and should be superseded by other means based on a more accurate knowledge.

An outline view of the present legal methods of dealing with inebriates who commit petty crime will make clear both the destruction and obstruction which follow from the failure to comprehend and utilize the facts which science and experience teach.

Of the estimated half million inebriates in this country, ten per cent. are yearly convicted of crime of all degrees. Of this number, two per cent. commit capital crime, and one per cent. of this number, or about one hundred persons, are executed every year. These statistics are only approximate estimates, but they illustrate in a general way the extent of inebriety, and how far the courts are called to restrain and check it. A study of the local statistics shows that in every town and city of this country a large part of the business of courts of justice is the legal punishment of inebriates. The inmates of jails and prisons who are inebriates are variously estimated

from fifty to eighty per cent. of the whole number. Year after year the courts administer the same treatment of fine and imprisonment for both inebriety and crime and yet the number of inebriates is increasing. When this fact is studied, it appears that a species of fatality seems to follow the first legal punishment of inebriates; seen in a repetition of the same offence and the same punishment, with an ever increasing frequency. In the courts these are called "repeaters," and the number of sentences of the same man for the same crime in some cases extends into the hundreds. In one thousand cases confined to Blackwell's Island, nine hundred and thirty-five had been sentenced for the same offence from one to twenty-eight times before. This fatality seems to start with the first sentence and punishment; and the victim is precipitated lower and lower, becoming more degenerated and incapacitated, until finally death follows in prison, the insane asylum, or alms-house.

The natural history of such cases is continuous punishment for inebriety, assault, theft, burglary, and petty crime, and finally murder. Each period of punishment is followed by the same or more aggravated crime. The intent and purpose of the law is defeated, and this means of treatment both directly and indirectly increases crime and prepares the inebriate for worse and more hopeless states. The courts and prison officials are powerless, public opinion sustains the law and demands its execution irrespective of all consequences. The poor victims punished to-day reappear to-morrow, under arrest for the same or a worse crime. The severity of the punishment makes no difference. The inebriate who, under the influence of alcohol, commits assault to-day, will do so to-morrow, and next year, and so on,

as long as his inebriety continues. No legal punishment of fines and imprisonment can stop him. These facts are sustained by the experience of all courts and prison officials. They are also equally true in the death punishment of inebriates for crime.

When the crime is the direct or indirect result of inebriety, it is only the natural outcome or logical result of conditions of brain disorder and surroundings. The assumption that inebriety is always a voluntary condition within the control of the person, is a most fatal error. On this error is based the death penalty. Its practical failure is apparent in the increase of capital crime by inebriates. The inebriate who has been arrested for petty crime while intoxicated many times before, finally commits murder in the same condition, and is executed. His friends and companions do the same thing and suffer the same penalty. Thus one brutal murder committed in a state of intoxication is followed by another equally brutal, and the execution of the murderer makes no diminution in the number of similar crimes that follow. In every daily paper appear records of the same murders by inebriates under the same circumstances. A wave of public vengeance may dispose of the criminal by lynch law, or only be satisfied when he is hung, but the same murders are committed again by the same class of men. This is only the repetition of the same blunder of fining and imprisoning inebriates for inebriety and petty crime. In both cases the victims are destroyed and similar offences are increased rather than diminished. In one case imprisonment and fines make the inebriate more incurable and less capable of change of life and living ; in the other, the execution of the inebriate leaves a brutalizing, combative influence and a form of contagious glamor that defective brains

are powerless to resist. These are the facts which experience and observation fully confirm, and which the latest teachings of science explain and point out.

To-day it is shown that the action of alcohol on the brain and nervous system is anæsthetic and paralyzant. The use of alcohol to excess at intervals or continuously always numbs and paralyzes the higher operations of the brain ; the over-stimulated heart reacts and depression and feebleness follow. All the senses are disturbed and become more or less incapable of transmitting the impressions which are received. The brain is incapable of accurately comprehending the nature of acts and the relation of surroundings when under the influence of alcohol. The palsy which follows from this drug masks all brain action. Delusions of vigor and strength appear ; events and their consequences and motive and conduct are all exaggerated, misconceived, and misinterpreted, and the brain is unable to correct them. The pronounced delusions, illusions, delirium, mania, imbecility, and stupor seen in states of intoxication are only the advanced stages of brain conditions which begin with the first glass of spirits. The early changed conduct and speech of men who use spirits are the first symptoms of the paralyzing action of alcohol. More spirits are followed by more paralysis, and finally all judgment and experience and all distinctions of right and wrong, of duty and obligation, are confused and unreal. The supposed brilliancy which follows from the use of spirits is unreal and transient,—it is the glamour of the mind which has lost its balance and is unable to correct itself. No other drugs are known whose paralyzing effects on the higher brain centers are so positive and insidious. The inebriate and moderate drinker have always impaired brain force and nerve power. The automatic

nature of their life and brain-work may cover up this fact; but change the surroundings and demands on the brain, and its incapacity appears. Every toxic state from alcohol more or less permanently impresses and debilitates brain integrity.

The fear of the law and consequences of acts make little impression in such cases. The brain is anæsthetized and crippled, and cannot realize events and their nature and consequences. The crime committed by an inebriate cannot be the act of a healthy brain. The more pronounced his inebriety and the longer its duration, the more positive the disease and incompetency to reason and control his acts. The effort to fix a point in all disputed cases where sanity and responsibility joins insanity and irresponsibility is an impossibility which every advance of science demonstrates. It is equally impossible to use alcohol to excess for years and have a sound, normal brain. It is impossible in such a case to fully realize the nature and consequence of acts and obligations. It is a legal fiction to suppose that a crime committed while under the influence of alcohol was the voluntary act of a sane man. It is a legal fiction to suppose that a sane man would plan a crime, then become intoxicated for the purpose of executing it. It is a legal fiction to suppose that premeditation in crime committed by inebriates is evidence of sanity and consciousness of his acts. These are some of the facts of science which brings additional evidence of the error of capital punishment in such cases.

A study of the crime committed by inebriates amply confirms the facts of brain incapacity and disease. Thus in cases of capital crime by inebriates, delusions, illusions, morbid impulses, and epileptic explosions are common symptoms. In many cases capital crime is the re-

sult of peculiar circumstances and sudden strains on the enfeebled brain, or the possession of a morbid impulse, a delusion or illusion that suddenly dominates the mind ; also epileptic explosions, that are real attacks of maniacal fury and unreasoning. Alcoholic somnambulism or trance is present in many cases. The mind in these cases is oblivious to all outside influences or considerations and is subject to every passing impulse that may come from either external, or internal causes. At the time no general indications of unconsciousness may be present, yet a certain automatic line of conduct and history of crime give clear hints of brain enfeeblement. All crime by inebriates will be found associated with concealed or open delusions, morbid and epileptic impulses, and sense deceptions. In all these cases the brain is unsound and cannot act rationally and clearly. There are present in these cases either insanity of inebriety or the inebriety of insanity. The inebriety of the prisoner has merged into insanity, or some concealed insanity or brain degeneration has developed into inebriety or dipsomania. The death penalty to such cases has no horrors. It is rather welcomed. The struggle for life is the attractive publicity that makes a hero of the man, and the mystery of the end of life intensifies the interest to the last moment.

A summary of the facts we have outlined would sustain the following statements :—

1. The legal treatment of insanity has changed in obedience to a more accurate knowledge of the brain and its diseases.
2. The legal treatment of inebriety is unchanged to-day. Although it occupies two-thirds of the time of courts, all teachings of science and a larger knowledge of the inebriate and his malady are ignored.
3. The ruinous error of punishment by fines and im-

prisonment of inebriety, and petty crimes associated with it, which notoriously increases and perpetuates the inebriate and criminal, is a fact demonstrable in every community.

4. Thus public opinion, through mediæval theories and laws, are training and preparing a class of inebriates who first commit petty, then capital crime, with a certainty which can almost be predicted.

5. The death penalty for such crime utterly fails for the same reason. The execution of any number of this class simply opens the door for an army already prepared and trained to take their places.

6. From a scientific study of these cases, it is clearly apparent that they are diseased and incapacitated to act sanely. Alcohol has palsied the brain and made them madmen. The very fact of continuous use of alcohol is evidence of mental impairment and unreasoning act and thought.

7. To hold such men accountable for their acts, and by punishment expect to deter them from further crime, and by such punishment check others from similar crime, is an error which both scientific teaching and experience point out.

8. The object of the State, through the law, is to protect society and the individual; but if the execution of the law-breaker fails to accomplish this end, the laws are wrong.

9. The unfounded fear that the plea of insanity in crime, and the failure to punish, is an encouragement for further crime, is flatly contradicted by statistics.

10. Among the mentally defective, the insane, and inebriates, the death penalty is followed by an increase rather than a diminution of crime.

11. The inebriate should never be hung for crime committed while under the influence of alcohol.

12. This method of punishment is never deterrent, but furnishes an attraction for other inebriates who commit similar crime in the same way, following some law of mental contagion.

13. The inebriate murderer should be confined the rest of his life in a military work-house hospital. He should be under the care of others, as incapacitated to enjoy liberty and incompetent to direct his thoughts or acts.

14. A change of public sentiment and law is demanded, and a readjustment of theory and practice called for. The criminal inebriate occupies a very large space among the armies of the defective who threaten society to-day, and his care and treatment must be based on accurate knowledge, not theory.

15. Inebriate murderers should never be placed on public trial, where the details of the crime are made prominent or the farcical questions of sanity are publicly tested. They should be made the subject of private inquiry, and placed quietly in a work-house hospital, buried away from all knowledge or observation of the world.

16. The contagion of the crime and punishment would be avoided, and his services might repair some of the losses to society and the world.

REPORT OF THE COMMITTEE OF THE MEDICO-
LEGAL SOCIETY ON THE BEST METHOD
OF EXECUTION OF CRIMINALS BY
ELECTRICITY.

INTRODUCTORY.

In the six weeks that have elapsed since the preparation of our original report to the Society we have made further valuable experiments, and although our report had not as yet been officially printed, we have received so many useful suggestions and criticisms upon such portions as had been given to the public in the press—both through correspondents and through discussions in various papers and journals—that we are enabled to present at this meeting a fuller and more explicit expression of our opinions. The additional light thrown upon a difficult problem has permitted us to make a few slight alterations in our earlier report, and to subjoin an appendix for the better elucidation of the subject.

THE REPORT.

To the President and Members of the Medico-Legal Society :

Your Committee appointed at the September meeting to consider and advise upon the proper method of executing criminals by electricity, reports as follows:

The law recently passed by the Legislature of the State of New York, providing for the administration of capital punishment by electricity, goes into effect January 1st, 1889. All murderers sentenced to death for crimes committed on or after that date are to die by this means. As the use of electricity is an entirely novel method of putting to death human individuals, the manner of the application of the lethal current requires some thoughtful care and study.

The Commission appointed by the Governor to examine into various methods of causing death, which should be more humane than hanging, decided upon electricity. This Commission caused certain experiments to be carried out upon dogs, by which it was proven that electricity will produce certain and instantaneous death. In these experiments the animals were placed in a zinc-lined box half filled with water connected with one pole, while the other pole, in the shape of a wire, was wound around the nose or inserted into the mouth. There are no data as to the amount or kind of electricity employed. This method, although successful, is hardly applicable to a human being.

Some experiments were conducted by one of our Committee (Dr. J. Mount Bleyer), and reported in the *Humboldt Scientific Library*, March, 1887; and during the past summer a series of thirty or more careful experiments were made upon dogs with death currents at the Edison Laboratory, in New Jersey, by Messrs. Harold P. Brown and A. E. Kennelly and the chairman of this Committee (Dr. Frederick Peterson), all of which are of particular value to us in suggesting the proper method of executing criminals by electricity. These last were published in detail in the *Electrical World*, August 8th, 1888, and from them we have ascertained the following points:

The resistance of these dogs was measured and found to vary from 3,600 to 200,000 ohms, depending upon the differing thicknesses of the skin and hair, and the amount of moisture between the skin and the electrodes. The amount of electro-motive force was also accurately determined, and it was found that with the alternating current as low as 160 volts was sufficient to kill a dog, and that with the continuous current a much higher voltage was necessary for the production of a fatal effect.

There are several points requiring thoughtful consideration in the application of death currents to man which we now proceed to lay before you.

The average resistance of the human body is about 2,500 ohms. The most of this resistance is in the skin. It is evident, therefore, that the larger the surface of the electrode applied to the body, the less will be the resistance. But it is also a fact that the density of the current depends upon the superficial area of the electrode. With a pole of small diameter the passing current will be more dense than when an electrode of large sectional area is applied.

We think that immersion of the body in a large quantity of water to act as one pole, or the placing of large metal plates upon any part of the body, should be put entirely out of consideration. It is further well known that if metal be directly in contact with the skin during the passage of an electric current, burns and lacerations are apt to be produced.

We believe that all means hitherto suggested are open to criticism upon these grounds. The posture of the criminal requires also some discussion at our hands. We think there are serious objections to the employment of any apparatus in which the prisoner takes a standing position. There are so many histories of unseemly struggles and contortions on the part of criminals executed by the old methods, that the necessity of some bodily restraint is evident. Furthermore, the possibility of a tetanic contraction of the body from the shock of the current is to be borne in mind. In our

opinion, the recumbent or the sitting position is best adapted to our purpose.

Another question of importance is to which part of the body the two poles should be applied. There can be no doubt that one electrode should be in contact with the head. The other might be placed upon any portion of the body, upon the trunk or extremities, but there are obvious reasons why the neighborhood of the spinal cord would be more advantageous. The electric current, in passing through the body from one pole to another, undergoes more or less diffusion through the tissues. A current passing from the top of the head to the small of the back will be diffused throughout a great part of the brain, and all of the tissues of the neck. The medulla oblongata—a part of the brain which is the most vital—together with all the nerves of the neck and the spinal cord, which exercise jurisdiction over the lungs and heart, will be thoroughly permeated by the current applied in this way. As the seat of consciousness is in the brain, and particularly in the cortex of the cerebrum, it is clear that this faculty of the mind will suffer at once, if the current be sufficiently strong. The electric stream flows from the positive to the negative pole, and there might be some possible advantage in placing the positive pole on the vertex of the head, nearest the center of consciousness, although death in any case will be instantaneous.

After mature deliberation we recommend that the death current be administered to the criminal in the following manner :

A stout table covered with rubber cloth and having holes along its borders for binding, or a strong chair should be procured. The prisoner lying on his back, or sitting, should be firmly bound upon the table, or in the chair. One electrode should be so inserted into the table, or into the back of the chair, that it will impinge upon the spine between the shoulders. The head should be secured by means of a coat of a sort helmet fastened to the table, or back of chair, and to this helmet the other pole should be so joined as to press firmly with its end upon the top of the head. We think a chair is preferable to a table. The rheophores can be led off to the dynamo through the floor or to another room, and the instrument for closing the circuit can be attached to the wall.

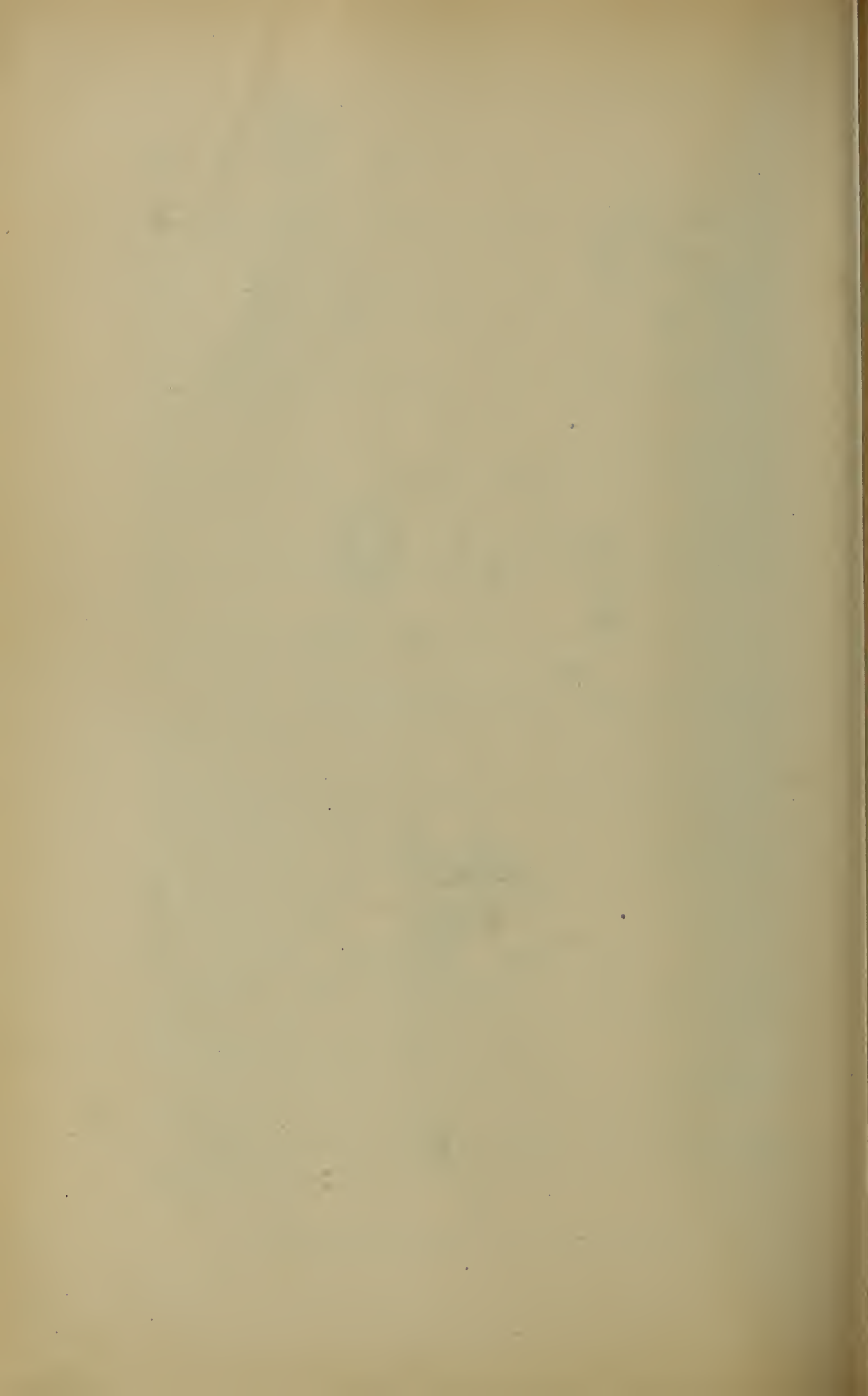
The electrodes should be of metal, between one and four inches in diameter, covered with a thick layer of sponge or chamois skin.

The poles and the skin and hair at the points of contact should be thoroughly wet with a warm aqueous solution of common salt. The hair should be cut short. Provision should be made for preventing any moisture reaching from one electrode to the other.

A dynamo capable of generating an electro-motive force of at least 3,000 volts should be employed, and a current used with a potential between 1,000 and 1,500 volts, according to the resistance of the criminal.

The alternating current should be made use of, with alternations not fewer than 300 per second. Such a current allowed to pass for from 15 to 30 seconds will insure death.





APPENDIX.

We append here the experiments in abbreviated tabular form upon which we have based our conclusions :

EXPERIMENTS WITH DEATH-CURRENTS BY MESSRS. BROWN AND KENNELLY AND DR. PETERSON AT THE EDISON LABORATORY AND AT COLUMBIA COLLEGE,

	POUNDS. WEIGHT.	OHMS RESISTANCE.	CHARACTER OF CURRENT.	VOLTAGE.	DURATION OF CONTACT.	RESULT.
Dog No. 1	10	7,500	Continuous	800	2 seconds	Death
" " 2	20	8,500	Alternating	800	3 "	Death
" " 3	13½	6,000	Continuous	1,000	instantaneous	Death
" " 4	46½	11,000	Alternating	800	2½ seconds	Death
" " 5	50	6,000	Continuous	1,000, 1,100 1,200, 1,300 1,400, 1,420 and 1,200	6 instantaneous shocks, the last 2½ seconds	Unhurt
" " 6	55	3,600	Alternating	570	3 seconds	Death
" " 7	41½	14,000	Alternating	250	5 "	Death
" " 8	56	27,500	Alternating	160	5 "	Death
" " 9	59	5,000	Alternating	260	5 "	Death
" " 10	76	15,000	Alternating	330	3 "	Death
" " 11	61	14,000	Alternating	272	5 "	Death
" " 12	91	8,000	Alternating	340	5 "	Death
" " 13	53	30,000	Alternating	220	30 "	Death

(Details in *Electrical World*, Aug. 8, 1888.)

EXPERIMENTS CONDUCTED BY MR. A. E. KENNELLY, AT THE EDISON LABORATORY.

	POUNDS WEIGHT	OHMS RESISTANCE	CHARACTER OF CURRENT	VOLTAGE	DURATION OF CONTACT	RESULT
Dog No. 14	21½		Alternating	205	3 seconds	Death
" " 15	19½		Alternating	176	15 "	Death
" " 16	39½		Alternating	178	15 "	Death
" " 17	57½		Continuous	400	40 "	Death
" " 18	18½		Alternating	140	45 "	Death
" " 19	20	8,000	Alternating	255	35 "	Death
" " 20	16½	4,200	Alternating	418	2 "	Death
" " 21	37½	200,000	Continuous	304	30 "	} Unhurt
" " 21	37½	200,000	Alternating	100	65 "	
" " 22	12½	4,000	Alternating	500	30 "	Death
" " 23	33	11,000	Alternating	536	1½ "	Death
" " 24	10	9,700	Alternating	517	1 "	Death

(Details in *Electrical Review*, Sept. 22d, 1888.)

280 REPORT OF THE COMMITTEE ON THE BEST METHOD

Objections having been made to the dogs on account of the small weight of the animals, the following larger animals were experimented upon by Mr. Harold P. Brown before your committee.

EXPERIMENTS CONDUCTED BEFORE THE COMMITTEE OF THE MEDICO-LEGAL SOCIETY
AT THE EDISON LABORATORY, DEC. 5TH, 1888.

By Mr. Harold P. Brown.

	POUNDS WEIGHT	OHMS RESISTANCE	CHARACTER OF CURRENT	VOLTAGE	DURATION OF CONTACT	RESULT
Horse	1,230	11,000	Alternating	700	25 seconds	Death
Calf	124½	3,200	Alternating	770	8 "	Death
Calf	145	1,300	Alternating	750	5 "	Death

(Details will be reported in *Electrical World*.)

In most of the dogs the poles were bare copper wire around wet cotton waste wound about a fore and opposite hind leg. Poles the same in a horse, but applied to both fore legs. In the calves sponge-covered metal electrodes were applied, one to middle of forehead and one near the spine between the shoulders.

Death with the alternating current was without a struggle; with the continuous, painful and accompanied by howling and struggling.

In the earlier experiments, where the alternations were from 660 to 4,100 per minute, the voltage was higher. In most of the experiments the alternations were made from 12,000 to 17,280 per minute, and the number of volts electro-motive force required was decreased.

It was suggested to us that the current should be applied through wristlet electrodes. Acting upon this idea we caused the poles to be applied to the forelegs of the horse, but were disappointed in the result. This method seemed not nearly as effective as our own suggestion of application to the head and back, as was illustrated in the speedy and easy death of the two calves.

Mr. Elbridge T. Gerry, Chairman of the Commission, appointed by the Governor, whom we invited to accompany us and witness the latest experiments, has suggested that clock-work be employed to make and break the circuit when criminals are executed in this manner, and we think this a matter worthy of the attention of those who are to carry out the requirements of the law. His request that we specify more particularly the kind of apparatus needed, has led us to make inquiry in this direction. Relative to this matter, Mr. Harold P. Brown, who, by his numerous physiological experiments with death currents and his high attainments in this department of science, is pre-eminently qualified to speak with authority upon this subject, recommends as follows:

"I think a portable steam-engine of three-horse power with a dynamo electric generator of the alternating type, self-exciting or with a small exciter, would be preferable. I approve fully the recommendations of your committee in regard to the electro motive force and other details. In my opinion \$5,000 would cover the cost of this apparatus."

If any doubt should exist in the minds of some that electricity would not

necessarily be fatal to man because it has been successfully applied to lower animals, we have but to call attention to the fact, that since 1883 some 200 persons have been killed, as we are credibly informed, by the handling of electric lighting wires.

As most of these people were killed probably by contact of the hands with the wires, it shows that in man at least death is rapid in this manner. Hence the suggestions made to this Committee as to the use of wristlet electrodes have their value; and it is possible that this method, with the prisoner fastened in a chair, may ultimately prove the most desirable, as doing away with a complication of appliances and lending greater simplicity to the procedure.

FREDERICK PETERSON, CHAIRMAN.
R. OGDEN DOREMUS,
FRANK H. INGRAM,
J. MOUNT BLEYER.

EUTHANASIA IN ARTICULO MORTIS.*

EDWARD P. THWING, M.D., PH.D.

Death is ordinarily painless. The phenomena which precede it often indicate extreme suffering, but the final juncture of dissolution—measured by moments or hours—is generally one of physical and mental placidity. And yet we have in medical nomenclature, the word *cacothanasia*. It expresses a fact. Some deaths are agonizing. The spectacle is harrowing to survivors, even if assured that the convulsive movements are partly or wholly automatic and unintelligent. The propriety of anæsthetics in such cases is naturally suggested. Now the question arises just here, Has a dying man a right to demand Euthanasia thus induced? Or, has his family this privilege? How far can the medical man extend relief to the dying? Is a *coup de grace* allowable? Clearly enough, he cannot, morally or legally, abridge life by an hour. Common law guards this point by the most sacred sanctions. It rests on the divine precept, “Thou shalt not kill.” The character of the patient’s sufferings, whether resulting from some terrific casualty or from hopeless disease, their intensity and probable duration are matters not relevant to the issue in a legal point of view. The patient’s prayer to be put out of misery must be disregarded. Galen’s dictum, “*Dolor dolentibus inutilis est*,” we admit. Equity—which is good sense used in the interpretation of law on the part of its administrators—will regard the intent of the phy-

*Read before the Medico-Legal Society, 1898.

sician who humanely assists the patient in, or out of his sufferings ; still, the letter of the statute stands. We may not give the mercy stroke. Hence the cynic phrase of long ago, "*Durum sed ita lex scripta est.*"

On the other hand, while a criminal suit might be brought against a practitioner for hastening death, a civil suit for damages might be brought for professional neglect if he does not do for his patient all that he should do, even in the article of death.

The following case presents no novel features in its medical aspects, but it is cited to elicit a discussion, here and elsewhere, of its forensic relations.

Last June, a telegram called me to a distant city to a person stricken with apoplexy and hemiplegia. The age of the patient, a widow of sixty-six years, the severity of the attack and her plethoric habit, promised a fatal issue within a day or two. She lingered, however, five days, speechless from the first, and comatose. Her vigorous constitution yielded but slowly. Automatic movements, like pulling of the clothes, lifting the hand to the head and other signs of restlessness, continued till near the end. The head and eyes were turned to the paralyzed side—which is unusual—the pupils were equal, the face flushed and livid, pulse dicrotic, and loud rhoncal sounds increased as dissolution approached. An hour before death the pulse was nearly imperceptible, breathing stertorous, respiration twenty-seven, extremities cold, and the *bruit humorique* in the pre-cordial region marked. Signs of suffocation appeared. The attendant physician had left the case in my hands forty-eight hours before, believing that life would soon be extinct. The reality of suffering I could not admit, but the appearance of it in actions, purely reflex, was painful to me. As her only surviving kinsman, I took the

responsibility of administering a mild anæsthetic, moistening a handkerchief at intervals from a vial containing two drachms of chloroform and six drachms of sulphuric ether. The handkerchief happened to be one just saturated freely with cologne by the nurse, so that the substance inhaled, as well as the method of inhalation produced a bland, anodyne effect. Essential oils have sometimes been used, in foreign practice, to cover the repulsive odor of ether. The handkerchief was not held so near the nostrils as to prevent the free admixture of atmospheric air, and the facial expression of the unconscious sufferer was carefully studied. In two or three minutes the stertor ceased. The spasmodic actions of the arm were arrested. Respiration became easy and a general quietude secured. Euthanasia was gained and an apparently painful dissolution avoided.

Fifteen minutes after withdrawing the anæsthetic, the final breath came, without the slightest spasm of the glottis or respiratory muscles, without any other physical struggle or sound. At the autopsy—which, by the way, revealed excessive sanguineous effusion, red softening and clot in the anterior, ascending convolution, calcic and fibrous degeneration, thrombosis of the basilar vein and other vascular obstructions—one of the five physicians present gave a case where he had, at the request of parents, administered ether to a child suffocating in membranous croup, and produced Euthanasia, not less to the relief of the parents than to that of the patient.

The queries, therefore, again return. Has the dying man a right to ask of us this or some other form of assistance? If he is speechless may his family demand it? How far may the medical man extend this boon to the dying?

TESTAMENTARY CAPACITY IN MENTAL DISEASE.

BY A. WOOD RENTON, ESQ., of the London Bar.

In this paper I propose to contend that the current of the comparative case-law of testamentary capacity in mental disease has, with a few temporary aberrations, steadily flowed from its commencement in support of the following propositions, which are consistent with, and not inaccurately represent, the most advanced medico-legal opinion.

PROPOSITOIN I.—A testator must possess a memory sufficiently active to recall (*a*) the nature and extent of his property, and (*b*) the persons who have claims upon his bounty : and a judgment and will sufficiently free from the influence of morbid ideas or external control to determine the relative strength of these claims.

AUTHORITIES.—(1) *Combe's case* (Moor, 759 ; 4 Burn's E. L. 61 ; 3 Jac. 1). In the Star Chamber, it was agreed by the judges that sane memory for the making of a will is not at all times when the party can speak 'yes' or 'no,' or had life in him, nor when he can answer to anything with sense ; but he ought to be of judgment to discern, and to be of perfect memory, otherwise the will is void. (2) *Herbert v. Lowins* (1 Ch. Rep. 24 ; 3 Car. 1). 'To a disposing memory it is necessary there be an understanding judgment, fit to direct an estate.' Cf. also *Winchester's case*, 6 Co. 23a ; Trin. 41 Eliz. K. B. (3) *Harwood v. Baker* (3 Moo. P. C. 282, 1840), per Erskine J., at p. 290. 'In order to constitute a sound disposing mind, a testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard, but . . . he must also have capacity to comprehend the extent of his property and the nature of the claims of others whom, by his will, he is excluding from all participation in that property. The protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and more especially'—which was the case in *Harwood v. Baker*—'when that one object may be so forced upon the attention of the invalid as to shut out all others that might require consideration.' (4)

Converse v. Converse, per Redfield J. (21 Verm. R.). The testator 'must undoubtedly retain sufficient *active* memory to collect in his mind, without prompting, particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their obvious relations to each other, and be able to form some rational judgment in relation to them.' Cp. also *Blanchard v. Nestle* (3 Denio 37) and *Simpson v. Gardner* (11 S. 1051), 1833, per Lord Cringlette. (5) The law as to those particular functions of the mind which must be sound in order to create a capacity for the making of a will is thus laid down by Sir James Hannen in *Boughton v. Knight* (L. R., 3 P. & D. 64), 1872. 'There must be a memory to recall the several persons who may be fitting objects of the testator's bounty, and an understanding to comprehend their relationship to himself and their claims upon him. A sound mind does not mean a perfectly balanced mind, free from all influence of prejudice, passion or pride. The law does not say that a man is incapacitated from making his will if he proposes to make a disposition of his property moved by capricious, frivolous, mean or even bad motives; eccentricities as they are commonly called, of manner, of habit, of life, of amusements, of dress, and so on, must be disregarded. But there is a limit beyond which one feels that it ceases to be a question of harsh, unreasonable judgment of character, and that the repulsion which a person exhibits towards one or more of his children must proceed from some mental defect in himself.' (6) *Morison v. Maclean's Trustees* (24 Dunlop, 625), 1862. 'The test of capacity to execute a settlement cannot possibly be stated without reference to the settlement itself' (per Lord Justice Clerk Inglis, at p. 631). (7) *Blewitt v. Blewitt* (4 Hagg. E. R. 410), 1833. 'When capacity is in question, the enquiry always is, Was it adequate to the act?' (per Sir J. Nicholl, at p. 452).

In support of this proposition the following cases may be cited: *English*—*Greenwood v. Greenwood* (3 Curt. Appendix), 1790. *Banks v. Goodfellow* (L. R., 5 Q. B., per Cockburn C. J., at p. 559). *Smee v. Smee* (L. R., 5 P. D. at p. 90, per Sir James Hannen). *American*—*Delafield v. Parish* (25 N. Y. 9), 1862. *Harrison v. Rowan* (3 Walsh C. C. 385, 386). *Boyd v. Eley* (8 Watts R.). *Scotch*—*Campbell v. Davidson* (4 Muir 171), 1827. *Hogg v. MacNeill* (4 Muir 448), 1828. *Laing v. Bruce* (1 D. 59), 1838. *White v. Ballantine* (1 Shaw A. C. 472).

Illustrations.—(1) A, at the time when he made his will, had lost the use of his right side from paralysis and could articulate nothing but 'aye' 'ho' (for 'no'). The provisions were complicated, and were not originated by the testator, but suggested to him and noted down by interested parties. The will was reduced. *Gillespie v. Gillespie* (Fac. Dec. Feb. 11, 1817). Cp. a decision by Dr. Lushington, on precisely similar grounds, *Durnell v. Corfield* (1 Rob. E. R. 51, 1844) (2) A testatrix gave instructions for her will which was prepared in accordance with them. At the time of execution, the testatrix merely recollected that she had given those instructions, but believed that the will which she was executing was in accordance with them. The will is valid. *Parker v. Felgate* (8 P. D. 171, per Sir James Hannen, at pp. 173, 174), 1883. If the testatrix had merely authorized her solicitor to make a will and had then said, 'I do not know what you have put down, but I am quite ready to execute it,' the will would be invalid.

Hastilow v. Stobie (1 P. & D. 64, 1865), overruling dicta of Sir Creswell Creswell, in (a) *Middlehurst v. Johnson* (30 L. J., Prob. 14, 1860), and (b) *Cunliffe v. Cross* (3 Sw. & Tr. 36, 1863). (3) 'A sickly child, newly *pubes*, and without the knowledge of his curators, made a will in the absolute favor of the nurse under whose care he had been.' The will was reduced as inofficious. (Nisbet's Doubts, temp. Charles II. 207). (4) A, the testator was aged and of doubtful capacity. His will was prepared by a solicitor, B, who was therein appointed executor and one of the residuary legatees. The will was pronounced against. *Durling v. Loveland* (2 Curt. 225), 1839. (As to the precautions necessary in such cases to rebut the presumption of undue influence, see the remarks of Sir H. Jenner, at p. 228). (5) Ely Stott died 18 Nov., 1821, leaving a widow, and a daughter by his first wife. The amount of his personal estate was nearly £40,000. By his will, dated 26 May, 1818, Stott gave his daughter, to whom he had conceived a violent and irrational aversion, a life interest only in a comparatively small portion of his property. Held, by Sir John Nicoll, that this unfounded antipathy had prevented the testator from properly appreciating his daughters claims upon him, and that the will must be pronounced against. *Dew v. Clark* (3 Add. 79—209. Cp. also 2 Add. 123 et seq., 1826.)

PROPOSITION II.—Intellectual insanity *prima facie* destroys testamentary capacity: but this presumption may in any case be rebutted by evidence, of a lucid interval—or that the insanity and delusions of the testator were irrelevant to the subject-matter of his will, or insufficient to prevent the exercise of a disposing memory, judgment and will—at the time when the disputed instrument was made.

AUTHORITIES.—(1) An inquisition *de lunatico inquirendo* is presumptive, but not conclusive, evidence of testamentary incapacity at the time.

'Presumptive.' Cf. *Hall v. Warren* (9 Ves. 605, per Sir W. Grant M. R., 1804). *In re Watts* (1 Curt. 594, 1837). *Snook v. Watts* (11 Beav. 105, per Lord Langdale M. R., 1848).

'But not conclusive.' *Rodd v. Lewis* (2 Cas. temp. Lee 176, 1755).

(2) The presumption arising from residence in an asylum, or from other *prima facie* evidence of insanity, may be rebutted by proof of a lucid interval, or that the insanity or delusions were irrelevant or immaterial.

Illustrations.—*Lucid Intervals.* (1) W. P., who for many years had been afflicted with habitual insanity, accompanied with intermissions, executed a will while confined in a lunatic asylum. The instructions for it were designed and written without assistance by himself, and the will made a natural and equitable distribution of his property. Probate granted. *Nichols v. Binns* (1 Sw. & T. 238, 1858). Compare the decision in *Martin v. Johnston* (1 F. & F. 122) in the same year. (2) *Cartwright v. Cartwright* (1 Phillim. 90, 122, 1793, 1795). A, a patient in an asylum made a will in which she left practically her whole fortune to her nieces. The circum

stances under which the will was executed were as follows : ' On Aug. 14, 1775, *A* was supplied with pen, ink and paper, by Dr. Battie, the superintendent of the asylum, to quiet and gratify her, though he considered her at the time quite incapable of making a will. Her attendants retired, but watched her. She was so agitated and furious that they were fearful she would attempt some mischief to herself. At first she wrote upon several pieces of paper and got up in a wild and furious manner, and tore the same and threw them in the fire; and after walking up and down the room many times in a wild and disordered manner, muttering and speaking to herself, she wrote the paper which is the will in question.' Probate granted on the grounds that (a) the will was originated and executed by the testatrix and (b) the provisions were 'wisely and orderly framed.'

This decision has frequently been cited in support of the contention that the law at one time made the instrument in dispute the best, if not the sole criterion of the capacity to execute it. But it is doubtful whether Sir William Wynne intended to lay down any such rule (cf. *Chambers v. Yatman* 2 Curt. 415, Sir H. Jenner at p. 447, 1840): and if he did, it has since been distinctly repudiated. (*Brogden v. Brown*, 2 Add. 441, 1825).

Other Authorities.—*Clarke v. Lear* (Mar. 1791); *Coghlan v. Coghlan* (date not given).

Delusions foreign to the subject-matter of the will.—(1) *A* made a will in favor of *B*, his niece, who was living with him, and was the object of his favor and regard. At the time of executing this will, *A* was under a delusion that *C*, to whom he had borne a violent hatred, and who was actually dead, was still alive. *C* had no claim whatever on *A*. Probate granted. *Banks v. Goodfellow* (L. R., 52, B. 549, 1870). (2) Under the same circumstances, *A*'s hatred to *C* is such that the very mention of his name unfits him for business, and renders him unable to estimate the comparative claims of *B*, *D* and *E*, upon his bounty. *Semble*. Probate would be refused. *Creagh v. Blood* (2 J. & La Touche, Irish, 509, per Sir Edw. Sugden L. Ch., at p. 515).

Delusion or insanity insufficient to suspend testamentary capacity as above defined.—(1) *A*, a testatrix was under delusions, which were intermittent, and considered trifling by her friends, about her money matters. Her capacity to revoke a will is not destroyed. *Laing v. Bruce* (1 Dunlop 59, 1838). (2) *M* disinherited his relations, to whom he had conceived a strong dislike, which was not, however, proved to have been founded on delusions. *M* was alleged to have had a sunstroke when on service in Sierra Leone; and he believed that in youth he had been fed with game taken out of eagles' nests, and that soldiers suffering from yellow fever were in his bed. *M*'s will is valid. *Morison v. Maclean's Trustees* (24 Dunlop 625, 1862). *A fortiori* testamentary capacity is not destroyed by a delusion which quickens the testator's faculties. Cp. *Jenkins v. Morris* (14 Ch. D. 674).

The exceptions to this proposition are chiefly apparent. In *Dew v. Clark* there was the clearest evidence that the will in dispute sprang directly from the diseased belief of the testator: and further, it may be seriously questioned whether Sir John Nicoll's language will bear the construction popularly put upon it that delusion is the only criterion of insanity (cf. 3 Add. pp. 90, 93, 170, 204, 205, 206, with *Chambers v. Yatman*, 2 Curt., at p. 448).

In *Waring v. Waring* (6 Moo. P. C. 341 et seq., 1848), Lord Brougham did indeed declare that any the least degree of insanity would vitiate a will, made under its influence : and this doctrine was accepted by Sir J. P. Wilde in *Smith v. Tebbits* (L. R. 1 P. & D. 398-437, 1867): but in both cases, the presence of insane delusions, distinctly operating on the disposing mind of the testator, reduced this metaphysical analysis to the proportions of an *obiter dictum*.

PROPOSITION III.—A lucid interval is not necessarily a complete restoration to mental vigor previously enjoyed : nor is it merely the cessation or suppression of the symptoms of insanity : it is the recovery of testamentary ‘memory, judgment and will,’ as defined in Proposition I.

The history of this definition of ‘lucid interval’ is interesting.

‘*Not necessarily,*’ &c., per Eldon L. Ch. in *Ex parte Holyland* (11 Ves. 10, 1805), disapproving a dictum of Lord Thurlow.

‘*Not merely the cessation or suppression,*’ &c., see per Sir John Dodson in *Dyce Sombre v. Prinseps* (1 Deane, at p. 110, 1856).

‘*It is the recovery,*’ &c., *Towart v. Sellars* (Scotch Appeal, 5 Dow. at p. 236, 1817).

PROPOSITION IV.—An insane delusion is not merely an unfounded, though colorable, suspicion : nor even a belief which no rational person would have entertained : it is a persistent and incorrigible belief of things as real which exist only in the imagination of the patient, and which no rational person can conceive that the patient when sane would have believed.

History of this definition.

‘*Not a colorable suspicion,*’ *Chambers v. Yatman* (2 Curt., at p. 448).

‘*Nor even a belief,*’ &c., per Lord Brougham in *Waring v. Waring* (v. ante) overruling Sir John Nicoll in *Dew v. Clark*.

‘*But a belief,*’ &c. Lord Brougham. *ubi supra*.

‘*Which no rational person,*’ &c. *Mudway v. Croft* (3 Curt. 671, 1843), implicitly disposing of the dictum of Lord Campbell in *Ditchburn v. Fearn* (6 Jur. 201, 1842).

In *Mudway v. Croft*, the following passage from Dr. Ray’s Medical Jurisprudence (at p. 131), is expressly adopted : ‘It is the departure from the natural and healthy character, temper and habits which constitute a symptom of insanity, and in judging of a man’s sanity, it is consequently as essential to know what his habitual manifestations were as what his present

symptoms are.' This doctrine has been applied with fair consistency. Cf. *Austin v. Graham*, (8 Moo. P. C. 493, per T. Pemberton Leigh, 500-1, 1854), and *Dyce Sombre v. Prinseps* (1 Deane).

PROPOSITION V. Neither subsequent suicide, nor supervening insanity will be reflected back upon previous eccentricity, so as to invalidate a will.

Cf. *Hoby v. Hoby* (1 Hagg. 146 1828, per Sir J. Nicoll): aliter in the case of previous insanity. *Symes v. Green* (1 S. & T. 401, 1859).

PROPOSITION VI.—Affective or moral, insanity does not (generally?) destroy testamentary capacity.

Illustration.—A, the validity of whose will was in question, took an irrational pleasure in hearing of the suffering of others, rubbing his hands, grinning, and otherwise manifesting his gratification at evil tidings. He was uncharitable and cruel. Probate granted. *Frere v. Peacocke* 1 Rob. E. R., 442, per Sir H. Jenner Fust, at p. 456, 1846. (Cp. *Morison's case*, per Lord Cowan, 24 Dunlop 625, 1862). *Semble.* Insanity of character (primare verrucktheit), if sufficient to unhinge the disposing mind, would destroy testamentary capacity.

PROPOSITION VII.—Upon the executor who propounds a will rests the burden of proving (a) testamentary capacity, (b) knowledge and approval of its contents, and (c) due execution.

The heir-at-law rests securely upon the statutes of descent and distribution until some legal act has been done by which their rights under those statutes are lost or impaired.' (Per Thomas J., *Crowningshield v. Crowningshield*, 2 Gray 526).

Other authorities.—*American*—*Quick v. Mason* (22 Maine 438); *Cilley v. Cilley* (34 ib. 162). *English*—*Sutton v. Sudler* (3 C. B. N. S. 87, 1857).

PROPOSITION VIII.*—*Prima Facie* an executor is justified in propounding his testator's will.

Cases —*Boughton v. Knight* (per Sir James Hannen, 3 P. & D. 64). *Snee v. Snee* (5 P. D. 90).

The legal view of insanity in its forensic relations, civil and criminal, has been attacked, and attacked not only by alienists, of the baser sort, on the ground that whereas in dealing with the criminal *responsibility* of the insane, we adhere to rigid and obsolete formulæ

*Added for the sake of completeness, though irrelevant to the main question under discussion.

and persist in defining that which is essentially undefinable, we yet recognize several distinct criteria of *capacity* in mental disease. Now it is no part of my present task to argue that the 'rules in Macnaghtens case' are not 'definitions of insanity' at all, but rough, and approximate criteria of *punishable insanity*, or to maintain that the absence of any such criteria has seriously impaired the efficacy of French criminal law. But I respectfully claim that our law of testamentary capacity is not open to reproach. We have grasped the fact that the *disease* insanity is merely one of the indicia, of the *state* unsoundness of mind. We have made no attempt to lay down abstract rules for determining in every case the presence or absence of testamentary capacity. We narrow the issue to the question, Was this man capable of making this particular will at the time of its execution? and we are warranted in so doing by the views of Taylor and Maudsley, who are the representatives of all that is best in modern medico-legal thought.

*CIRCUMSTANTIAL EVIDENCE IN POISONING CASES.**

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The purpose of this writing is to examine a single one of the important topics of medico-legal investigation from the standpoint of the lawyer. Whatever has been said in this connection in the treatises on medical jurisprudence has been said chiefly for the benefit of the medical witness. Valuable hints to the advocate have been given by Wharton, Stephen, Greenleaf and others, and Bentham and Wills have paid special attention to the peculiar features of circumstantial evidence in general. But in the realm of poisoning cases, at least, the subject calls for a more direct and specialized treatment than has yet been given to it. What follows, will, it is hoped, at once explain and justify this statement.

It may be here pointed out, however, that poisoning cases offer a complication of questions and a wide range of investigation not present on the ordinary occasions when medical testimony is needed, and more capable of useful analysis. They differ, moreover, from the more common instances of homicide, for, on the one hand, the pleas of self-defence and of provocation and other exculpatory issues are, in the nature of the case, almost impossible, and the issue is reduced to a question of murder or utter innocence; and, on the other hand, the evidence cannot range over a vast field of facts limited only by the possibilities of methods of destruction, but is limited

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to a certain class of agents. For almost every step of proof, moreover, medical evidence is needed. In brief, there is a sameness about the evidence which admits of an induction and invites a helpful analysis and classification.

What, then, are the propositions to be proved in a trial for murder poisoning, and what is the nature of the evidence which may come into play relative to each proposition? It has been said that the issues of self-defence, provocation, etc., must almost always be absent, and for our purposes they may be left out of consideration. The question presented is the single one: Did the defendant kill the deceased by poison? Let us separate this into its component parts, noting the evidence relevant to each part. We can then examine the validity and the significance of the analysis.

In proving a charge that the accused killed the deceased by poison, these three propositions are involved:

First. That the deceased died by poison:

Second. That the poison was administered by the accused or by his agency:

Third. That the accused foresaw the harmful effects of the substance given.

In the following table the results of the analysis are summarized in advance for convenient reference:

MURDER BY POISON.

<i>Factum Probandum.</i>	<i>Direct Evidence.</i>	<i>Admissions.</i>	<i>Circumstantial Evidence.</i>
I. Death of the deceased by poison	Etc.	Etc.	I. (a) Results of chemical analysis. (b) Results of pathological observations.
II. Administration of the poison by the accused.	Etc.	Etc.	II. (a) Previous possession of the poisonous substance. (b) Opportunity of administration. (c) Antecedent possibility or probability. (d) Impossibility or improbability of administration by another agency.
III. Knowledge by the accused of the probable poisonous effects of the substance given.	Etc.	Etc.	Etc.

1. The first proposition covers that part of the subject of proof commonly called *corpus delicti*.

This proposition is the first and all-important step; for without its establishment the case must entirely fail. Unless the deceased died by poison it is unnecessary to inquire who poisoned him. It is this part of the case which, in poisoning trials, is raised into an importance far greater than in ordinary trials for murder. Usually, upon proof of an unnatural death, no further evidence as to the *corpus delicti* is needed, and no special difficulty attaches to the nature of the agency causing the death. But in this class of cases specific proof of the use of poison always remains. It is often the most serious task for the prosecution, and has on many occasions become the turning point of the case. Moreover, there are open

only two modes of proving the cause of death to have been poison—proof by the results of analysis of portions of the body, or of substances a part of which has been known to enter the body, and proof from the observed symptoms and appearances, both before and after death. Not infrequently one of these modes may be inconclusive or may become impossible, and in that case the line of evidence is still more restricted.

It should be observed, too, that these methods both rest on circumstantial evidence solely. Direct evidence, it may be premised, properly includes the content of all testimony immediately asserting or denying the existence of the fact to be proved, and thus, in order to be conclusive, calls only for an inference as to the credibility of the witness. Circumstantial evidence, on the contrary, is evidence tending to prove some other fact, presumably relevant (called by Bentham “sign,” “*factum probans*,” “evidentiary fact”), and thus in order to be valuable needs an intermediate inference or inferences other than as to the credibility of the witness. Testimony, then, to the symptoms, or to the reaction produced by certain portions of the body subjected to chemical analysis, is circumstantial evidence, because it needs the help of an inference to bridge the gap between these facts and the main fact of death by poison.

2. Passing to the second principal fact, it may of course be proved by direct evidence of the administration of poison by the accused. But this evidence can rarely be secured.

Practically, circumstantial evidence alone is available. We are relegated to proof of subsidiary facts, from the existence of which we may infer the existence of the principal fact. These subsidiary facts or groups of facts, forming a complete chain of evidence, are four in number :

- (a) Previous possession of the poisonous substance ;
- (b) Opportunity of administration ;
- (c) Antecedent possibility or probability (including motive, expressed intention, etc.) ; and
- (d) Impossibility or improbability of administration by other agencies.

In the absence of direct evidence of administration by the accused, the evidence offered must be calculated to prove these four facts. Exactly what probative force should be allowed to each or to the co-existence of all will be discussed later.

3. Thirdly, it must be shown that the accused administered the poison with knowledge of its probable effects.

This issue does not frequently become important, for the evidence that goes to prove the second main fact will usually serve to prove this one. In any case the evidence available must, of course, be mainly circumstantial. It is only rare, however, that it is possible for the defence to make even a show of contending upon this point. In Miss Blandy's trial (at Oxford, in 1752) this issue became vital, for the innocence of the accused depended upon the truth of her story that she had administered the fatal powders to her father as a love potion to retain his affection. Again, in the case of George Ball (in 1860, at Lewes), it appeared that an overdose of prussic acid was given for medicinal purposes, and upon the fact that the overdose was an innocent mistake turned the fate of the accused.

These classes comprise the largest share of the evidence that can be relevant to a poisoning trial. But there remains another and an important class of evidence bearing on the general question of guilt. This class comprises all general admissions of guilt ; not admissions of one or more of the subsidiary facts above mentioned, for

these take their proper place under the preceding classes of evidence, but all evidence in the nature of conduct or words subsequent to the guilty act and tending to show a consciousness of guilt on the part of the accused. This evidence includes: First, express oral or written admissions of guilt, or what are called, in criminal law, confessions; and, secondly, conduct pointing toward a consciousness of guilt.*

Some illustrations will show how distinct a class of indications is here included.

One of the circumstances in Donellan's case was the extreme anxiety of the accused, unexplainable except on the supposition of conscious guilt, to prevent any inspection of the fatal medicine by rinsing the bottles and attempting to destroy them. Palmer's repeated and uncalled-for meddling, at the time of the post-mortem examination, with vessels containing the stomach and other organs of the deceased, and his success in spilling the contents of some of them, were pointed out in argument as very damaging circumstances. So, also, instances continually appear of concealment and evasion, of disguise, of false, incredible or contradictory statements by the accused; of the suppression, destruction or fabrication of evidence, including attempts at bribery, at the establishment of an alibi, etc., of fear, flight and confusion—all these indications pointing more or less positively to a guilty consciousness. Evidence of this sort, when we can be sure that our interpretation of it is correct, is very satisfactory. It should be added

(*The term confession is properly restricted to an express oral revelation by the accused, and hence the word admission, covering both words and conduct, is here preferable, though its use is commonly confined to civil cases. The Benthamic phrase "confessional evidence" includes admissions as to subsidiary facts as well, but these it has seemed better to place under the heads already indicated.)

that the defence, as well as the prosecution, is concerned with producing evidence of this nature. The corresponding line of proof for the defence is founded on the inferences to be drawn from an apparent consciousness of innocence, and, in addition to evidence explaining away the alleged admissions of guilt, the defence may adduce evidence that the comportment of the accused was inconsistent with a guilty consciousness.

Under one or another of the above divisions, it is believed that all possible evidence must fall. Let us now revert to this analysis in detail, with a view to testing its validity and illustrating its significance.

1. In the first place, remembering that unless a death by poison can be proved, the case of the prosecution falls to the ground, care will be taken at every step to secure the complete and thorough establishment of this point. Remembering also that there are but two kinds of evidence available for this purpose—analytical and pathological—it will be ascertained as early as possible, whether from other circumstances of the case, or from the nature of the poison used, either of these kinds will be in any degree unavailable. Some of the most important poisoning trials on record have turned entirely on the question whether the deceased died by poison. The Palmer case (Rugely, 1855-6) and the Lamson case (Wimbledon, 1882) are instances in which there was an utter failure of one sort of evidence, and the necessity arose of relying upon a single set of phenomena for proof.

In the Lamson case, the symptoms spoken of by the deceased boy—a severe heartburn—suggested aconitia as the cause. Now, in the present state of our knowledge, the chemical tests for aconitia are unreliable and practically useless. Moreover, the symptoms exhibited dur-

ing illness are far from conclusive. How, then, can aconitia be detected? The only trustworthy effects are two: its taste, and its effect on small animals. Any substance containing aconitia produces a tingling and numbness when applied to the tongue or the lips, and when injected into the back of a mouse causes a characteristic staggering, paralysis and asphyxia. When these two tests agree, the presence of aconitia is absolutely certain. These tests accordingly were made with portion of the fluids in the body of the deceased, and aconitia was found in considerable quantities. A conviction ultimately ensued.

A similar instance is furnished by the Palmer case. Strychnia was suspected as the cause of death. It is not true, at the present day, that there is no infallible test for strychnia; for if by the "color test," so called, a particular succession of colors is produced, the presence of strychnia is determined beyond a doubt. Yet strychnia in a fatal quantity may be so minutely distributed throughout the system that the failure of this test to produce the proper colors does not prove that the poison is not present, and in that case resort must be had to the symptoms alone. This was what occurred in Palmer's trial. Whether through carelessness or through imperfection of the methods used, the body furnished no certain evidence, chemically, of the use of strychnine. The contest took place upon the significance of the symptoms, and the leaders of the medical profession were marshaled on either side. In this case, as in Lamson's, the cause of death was the crucial issue of the trial; for, if in truth the death was by poison, it was impossible upon the rest of the evidence to suppose that any hand but Palmer's had administered it. Tetanus, epilepsy, angina pectoris, were all suggested, but the

symptoms of strychnia were too clear, and a verdict of guilty was rendered.

The same issue became the turning-point in two other very instructive leading cases, in both of which an acquittal ensued, but, as few can help believing, erroneously. In the trial of Mrs. Wharton (Annapolis, 1872), the contest centred on the questions whether the tumbler of milk punch administered by the accused contained antimony, and whether the symptoms indicated death by antimonial poisoning. A cloud of witnesses were summoned, principally for the defence; indeed, the fact seems to have been that the prosecution did not properly anticipate either the difficulties to be overcome in proving the employment of poison, or the vigor of the efforts made by the defence to disprove it. The two chemists who testified for the prosecution obtained certain reactions and colored precipitates, which satisfied them that antimony was in the tumbler and in the body. But they did not take the final and conclusive step by obtaining the metal antimony itself, as they might have done if it had been present. The result was that, probably much to their surprise, other experts were secured by the defence who did not believe that the colors and reactions obtained by these two were absolutely conclusive, and thus the agency of poison was not proved beyond a reasonable doubt. The symptoms attending the sickness were explained by a number of physicians as not certainly distinguishable from those of meningitis, and thus failed to serve the purposes of the prosecution. A verdict of not guilty was rendered, though no one, upon reading the evidence, can convince himself that it was not an over-scrupulous regard for difference of expert opinion, rather than the very power and strength of innocence that led to the ac-

quittal. If the chemical evidence of the existence of antimony had been convincing, there can be no doubt that a conviction would have ensued. Dr. Smethurst's case (Richmond, 1859) was characterized by a similar issue. The employment of arsenic or antimony was suspected, but many witnesses testified more or less convincingly that other causes might account for the same appearances ; and though a verdict of guilty was returned, the conflict of medical testimony was brought into service and a pardon was secured. The only ground for granting it could have been the uncertainty of the evidence based on the symptoms. In this case, the chemical analysis had been carelessly conducted, and the evidence on that score had little weight.

These illustrations will suffice to suggest the very evident moral. Let it be your foremost care, upon undertaking a poisoning case, from the first step of preparation to the final address to the jury, to establish thoroughly the fact of poison's agency in the death. It may be that this cannot be seriously questioned by the defence. But the possibility of a slip should always be guarded against most carefully. If, as in the case of premature burial (Donellan's case), or of a suspicion that a substance like aconitia or strychnia has been the cause of death, there is a possibility that evidence of one kind or the other will fail, all efforts must be concentrated on the available evidence. Experts must be instructed and examined with a view to leaving no opportunity for failure in this essential step. It is needless to add that the defence, in the same way, if there appears any possibility of the weakness in the prosecution's case on this point, must seize upon it and make good use of such a stronghold.

2. Passing to the second issue (administration of poison

by the accused), let me take up and illustrate each of the subsidiary facts separately, and then say a few words concerning their probative force considered jointly.

(a.) *Previous Possession.* The evidence presented may constitute a strong or a weak case according as it fixes possession upon the accused, with details of time, place, and material corresponding more or less closely to the known circumstances of death, and having a significance more or less exclusive of innocent explanation. For example, the evidence may show, as in Dr. Smethurst's case (Richmond, 1859), no more than that the accused, being a physican, and constantly having in his possession drugs of all sorts, might without improbability have possessed a quantity of the fatal drug ; or the evidence may be, as in Palmer's case, of the purchase of packages of strychnia within two days before the death ; or, as in Dr. Pritchard's case (Glasgow, 1856), the prosecution may even be able to show that some poisoned tapioca, taken by the deceased, tallies with a quantity of the same substance found in the accused's room and tainted with the same poison. In Madeline Smith's case (Glasgow, 1857), she asserted that the arsenic which she was proved to have bought was used by her for the complexion, and this explanation helped to diminish somewhat the effect of the prosecution's evidence.

In Mrs. Wharton's case she had bought tartar emetic a day or two before the death, and was seen to apply the powder, or at least a portion of what appeared to be this powder, to her breast ; but no explanation was offered of the reason for so applying it. In the recent trials of Mrs. Robinson (Boston, Dec., 1887, and Feb., 1888), all the other circumstances combined to predicate guilt, but the one great difficulty running through both trials was the

inability on the part of the prosecution to prove any actual possession of arsenic. There cannot be the slightest doubt that if in any way arsenic could have been traced into the possession of Mrs. Robinson, there would have been a conviction on the first trial, and the scruples of the few who were not satisfied with the result of the second trial would have been allayed.* The defence grasped the situation, and realizing the importance of this point, put the accused on the stand to testify, that she never saw arsenic in her life, or even knew whether it was a liquid or a powder. In this case, then, the course for the prosecution was clear; their utmost efforts should have been (and doubtless were) concentrated upon the discovery of a previous possession of arsenic by the accused.

It should be noted that the effect of much evidence will be simply to contradict the impossibility of previous possession. Such evidence does not purport to be inconsistent with lack of possession, and may, in fact, be perfectly consistent therewith. It is offered with the humbler, yet often highly important, object of annulling possible efforts of the defence to show that possession by the accused was impossible. For instance, in

* After the writing of this article, but before its publication, a discovery (it is alleged) was made, which, taken in connection with the above statement, may be of interest. In taking out a furnace in the house occupied by Mrs. Robinson, there was found, behind the bricks, a package of "Rough on Rats," the destructive element of which is, of course, arsenic, the substance found in the stomachs of Mrs. Robinson's supposed victims; and the circumstances were said to be such as to show that the poison must have been placed behind the furnace during Mrs. Robinson's occupation of the house. Whether the story is true is not here material. The significance of it is the immediate clearing away of all doubt, in the minds of those who read and believed it, as to the guilt of the accused. So far as the writer could ascertain the effect of this discovery on the convictions of others, it seemed to be generally regarded as at last furnishing the missing link in the chain of the prosecution's evidence. To some extent, then, this attitude of mind corroborated the above analysis of the evidentiary needs of the case.

Donellan's case the prosecution, on the theory that laurel water, obtained by distillation, was the fatal agent, offered evidence that Donellan possessed a still, by means of which laurel water could have been made. This was of no direct value to prove the subsidiary fact of previous possession, but it was of value to defeat any possible efforts of the defence to show that Donellan did not have it in his power to obtain laurel water. The contrast between such negative evidence and evidence of a direct and affirmative character is illustrated by another circumstance of the same case. In Donellan's library was found a single volume of the transactions of the Philosophical Society. The volume was uncut except at a single place, and at that place was an account of the method of distilling laurel water. Nothing could have been more important to indicate a preparation by Donellan of laurel water.

It must be added that this kind of evidence, which may be called negative, is not peculiar to the subsidiary fact—previous possession—under consideration. It may be offered upon any of the other heads under (II.) as, under (b) (opportunity) to disprove an alibi. It may also appear under (I), as, for example, the evidence used in Palmer's case to rebut the contention of the defence that the failure to detect strychnia in the body by chemical analysis conclusively proved that strychnia had not caused death.

(b). *Opportunity*. Here also the evidence may have a wide range as to probative force. It may show only a general possibility of administration by the accused, or it may show specific and oft-recurring opportunities. In the Lamson case, it appeared that the accused, shortly before the fatal sickness, had called to see the boy and given him a capsule, which the boy swallowed. Here

the opportunity was proven with unusual detail. In the cases of Dr. Smethurst and Dr. Pritchard, the attendance of the accused during the last illness of their victims, and the general supervision exercised by them over the medicines administered, placed beyond doubt the existence of continued opportunities. In every case where the accused is a physician or a surgeon (and these comprise a very large number of the recorded cases) proof of opportunity is not likely to be wanting.

Lack of opportunity is of course one of the strongest issues open to the defence. Success, for example, in proving an alibi ends the cause at once. But the existence of an alibi is not the only contention that can arise under this head. Attention must be called to a class of cases in which the requisite of opportunity is apparently satisfied, and yet closer examination shows the contrary. In the trial of Madeline Smith it was proved that the deceased must have swallowed 200 grains or more of the arsenic which caused his death : and it was pointed out that the successful administration, by one having a hostile intent, of so large a dose of arsenic was an extremely improbable and almost unheard of occurrence. There was, therefore, strictly speaking, no opportunity, because no physical possibility, of administration by the accused, and one was forced to assume suicide. A similar instance is furnished by the trial of Adelaide Bartlett (London, 1886). Large quantities of chloroform had been taken by the deceased, not in the ordinary manner, but by swallowing, and great weight was given to testimony that the chances were enormously against the successful administration of chloroform in that manner during sleep. The nature of the substance administered and the mode of administration may thus often afford valuable indications as to the feasibility of administration by the accused.

(c.) *Antecedent Probability or Possibility.* Under this head belongs that multifarious mass of evidence touching, on the one hand, the habits of the accused, his disposition and general character, his relations with the deceased, his business affairs, and all other circumstances calculated to call into action a motive for or against the murder, and, on the other hand, touching his previous intentions, expressed or implied, and his preparations, attempts, or threats, if any of these indications can be gathered from his words or conduct previous to the time of administration. In poisoning cases, however, the treatment of this class of evidence is not materially different from that demanded in ordinary cases of alleged homicide, and does not need further illustration. It is to be noticed that the fact of previous possession, the chief probative force of which is that it tends to identify the accused with the person administering the poison, may often have some additional force as indicating preparation on the part of the accused.

It may be added that motive (a convenient but abbreviated term for the circumstances calculated to call an emotion into play) is not in itself a necessary thing to be proved. It is simply a most important one of the several sorts of evidence that go to make up a general antecedent likelihood of guilt. Neither the presence nor the absence of motive is conclusive. Here, however, as in the case of the other subsidiary issues under 2, the defence may theoretically prove an absolute negative; that is, that the commission of the crime by the defendant would be entirely contrary to what would be expected from his character and the circumstances of the case; although this cannot practically amount to more than evidence showing a high degree of improbability.

(d.) *The impossibility or improbability of administra-*

tion by an agency other than the defendant's is always an item of extreme importance. It is of most value to the prosecution when strong evidence is introduced by the defence under other heads, leaving suicide, for example, as the only other tenable hypothesis. In such a case, if this avenue can be closed up by the prosecution, an amount of evidence on the remaining points, otherwise insufficient, may prove conclusive. For instance, in the trial of Madeline Smith, already spoken of, purchases of arsenic by the accused on three occasions shortly before the death were well proved, and a sufficient motive (the dread of exposure of a criminal relation on the point of her marriage) was not wanting. It appeared further that the deceased came to Edinburgh, the scene of the fatal occurrence, at 9 o'clock in the evening, intending to meet the accused, and was not seen or heard of again until 2 o'clock the next morning, when he returned to his lodgings with the fatal illness upon him. The remaining evidence was such that the only other hypothesis possible was that of suicide. Here the prosecution was unable to close the gap. The theory of suicide, indeed, was not an improbable one in itself, and thus the evidence tending to show lack of opportunity was enabled to have full effect. So, too, in the Bartlett case, already mentioned, the evidence as to the physical impossibility of forcing chloroform, in the quantity alleged, down the throat of a sleeping person, practically threw upon the prosecution the burden of showing that suicide was impossible, and as in fact this was not at all unlikely, the defence stood in a very strong position.

In the trial of Mrs. Robinson, already mentioned, the prosecution were weak in being without evidence of previous possession, and if the hypothesis of suicide could have been put forward with the slightest degree of pos-

sibility, an acquittal would probably have ensued. The case of Ann Merritt (at Clapton, 1850) is a curious instance of how a trial may turn entirely on the question whether suicide was possible. Purchases of arsenic were proved, a motive, in the shape of desperate feelings against her husband, the deceased, and ample opportunity in her attendance on her husband's illness. But her defence was that she had placed the arsenic on a shelf near some medicinal powders and that her husband had taken them by mistake. If this were true, he must have taken them early in the morning of the day on which he died, for after that time he had been confined to his bed till his death at night. Accordingly, the prosecution attempted to show by Dr. Letheby (whose blunder in this case was afterwards brought up against him at the Palmer trial) that the arsenic could not have been taken into the system of the deceased more than four or five hours before death, and thus to prove suicide impossible. At the trial this evidence sufficed, and the jury returned a verdict of guilty. But the medical profession were not satisfied with the statements of Dr. Letheby, and after some pressure he was persuaded to write to the Home Secretary that it was possible, and even probable, that the arsenic had been taken early in the morning. Suicide thus becoming a plausibility, the woman's story might be true, and the case one of criminal negligence only; and on the strength of Dr. Letheby's retraction the Secretary commuted the sentence of death.

These illustrations, with the comments thereon, have been promised for the purpose of paving the way for the reception of two important statements concerning the analysis which has been presented. In previous discussions upon the nature and use of circumstantial evidence, including those of Bentham and Wills, the treat-

ment of the subject seems to have been confined to a general enumeration of different lines of evidence and the particular probative tendency of each. We do not find satisfactory attention given to the possibility of classifying the component subsidiary facts of circumstantial evidence accurately and exhaustively, or to the relative importance of the different subsidiary facts or groups of facts ; and, in consequence, the profound discrimination and subtlety exercised in these dissertations fail to afford us the maximum of usefulness. Whether in the subject of circumstantial evidence at large such coherence and logical relations exist, need not be here considered ; but, confining ourselves to circumstantial evidence of the administration of poison, it is believed that this evidence is characterized by such qualities, and it is hoped that they are clearly and correctly brought out by the analysis which has been offered. Let us see, briefly, whether in the evidentiary facts above discussed (*a*, *b*, *c* and *d*, under II there does not appear an exhaustiveness and a certain logical coherence.

1. By exhaustiveness (for want of a better term) is meant that under one or another of these heads must all circumstantial evidence come which tends to prove the act of delinquency on the part of the accused.

Leaving out admissional evidence and direct evidence of administration (which is, of course, rare), we have the certainty in preparing and presenting our case that every item of evidence secured or sought for has for its object the proof of one or another of these fact (*a*, *b*, *c* and *d* above) and gains therefrom its entire significance and value. It is hardly possible in this place to demonstrate that this analysis is in fact complete and exhaustive, partly for the reason that it is impossible to prove a universal negative. Let the reader test the analysis for

himself. It rests upon an examination of the process of ratiocination natural and necessary in proving the fact of administration, and upon the fact that no instance has been discovered by the writer which does not fall into one or another of the above classes.

If there is evidence amply and explicitly establishing each of these separate points, the main fact follows as an unavoidable culmination. Such complete array of evidence, however, rarely appears, and the question arises, what probative force, in the absence of complete proof upon all the points, is to be given to such evidence as exists. This brings us to the question, What is the relative probative value of each subsidiary fact, that is, to a consideration of the logical coherence of these facts.

2. It is, of course, impossible in such a matter to look for mathematical relations, or to expect to find the verification of some formula of variables. The tendency to construct an artificial theory upon facts which do not admit of it must carefully be restrained. But certain uniform characteristics may be pointed out. In the first place, complete proof by the defence of the absence of any of these links is fatal to the case of the prosecution. That is to say, it is necessary for the prosecution that each one of these facts should at least not be impossible. The impossibility of Capt. Donellan's making or procuring laurel water, if it could have been proved, would have ended the case. Such absolute proof can of course rarely be furnished, and the defence must be content with making every effort to secure it. The illustrated cases already cited will make this proposition sufficiently clear, and render unnecessary further examination in detail. Suppose, however, that upon three of the points the prosecution brings forward complete evidence, while on the fourth point the evidence is equally balanced.

In such a case the mind seems to find no difficulty in reaching a conclusion upon the remaining evidence and in inferring the existence of the main fact. Thus, in Mrs. Robinson's case, as has been already mentioned, the prosecution could adduce no evidence of previous possession, nor did the defence offer any satisfactory evidence of its improbability; while there was ample evidence of opportunities of administration, sufficient facts to excite a motive, together with strong expressions of intention, and practically an impossibility that any one else could have administered the poison; and upon this evidence a verdict of guilty was rendered. In other words, satisfactory proof of three points out of the four will usually be sufficient. But if the evidence upon the three points is only incomplete, to a greater or less extent, then it will scarcely be possible to infer guilt. Complete proof of three of the numbers seems necessary in order to counterbalance the weakness of the first number. Otherwise the door is opened for the hypotheses and no sure conclusion presents itself.

Again, if there is satisfactory proof upon two of the points and upon the other two the evidence is equally balanced the existence of the main fact can never be considered, as proved. The writer does not recollect any cases, however, which illustrate the last two propositions.

To travel further through the different possible combinations and to examine the significance of each, would not in this place be expedient. Enough has been said, it is hoped, to show that there is between these subsidiary facts, or groups of facts, a certain coherence and complementary relation. It is impossible, as has been said, in matters of inference to arrive at a mechanical certainty, or to measure to a fraction the weight of in-

gradient arguments. Perhaps in marking out, on the one hand, that amount of evidence which certainly will not sustain an inference of guilt, and on the other, that amount of evidence which certainly will sustain such an inference, we have gone as far in quantitative analysis as the nature of the materials will permit us safely to go. My object is gained if I have shown that these linked facts make up a logical whole, the component parts being mutually so related that a variance in one materially affects all the others.

We have now concluded our examination of this analysis ; and the question arises, of what value is it ?

I omit any consideration of the scientific value which attaches to every truth, great or small. I omit, also, any argument as to its value in a purely juristic sense—as to the light, for example, which it throws on the vexed question how far evidence should be admitted of previous administration of poison to other persons by the accused. I refer only to its practical value to the lawyer in the administration of justice ; and this is twofold :

1. Any sound analysis and classification must be of value in enabling the advocate to prepare his case intelligently. The search after evidence, the comprehension of its worth when found, the understanding of its proper place in the order of proof, and of the relative force of the different pieces of evidence—all those must depend largely upon the correctness of the plan of campaign which has been formed by the advocate. There will be a certainty and a confidence, an ability to gauge each fact in evidence and to make the best use of it, such as could not exist for one working without some such map before him. Its usefulness in this respect, it is believed, will suggest itself without further illustration.

2. But chiefly the advantage to be gained lies in the fact that what has been here explicitly stated is nothing more than what is realized and acted upon by every juryman without a distinct perception of the underlying reasons. I mean that the analysis which has been offered is valid, because it is based on the actual logical processes followed by the mind, and expresses in terms that upon which the judgment of the juryman is unconsciously founded. Most of us could detect a logical fallacy without hesitation, where to explain the reason of it would perhaps be impossible. So a juryman seizes the weak and strong points of a case without understanding the logical basis of his judgment. The important result is that the advocate, forearmed with an analysis of the evidentiary needs of the occasion, anticipating, on the one hand, the difficulties which the twelve will instinctively feel, may the more effectively endeavor to remove or alleviate them, and forecasting, on the other hand, the points most likely to tell favorably upon the minds of the jury, may direct his energies towards emphasizing and enforcing them. It would seem that without some such analysis and classification as has been the subject of this writing, the efforts of the advocate must be in the dark, formless, and incapable of producing their normal and best effect, whether in the preparation of a poisoning case or in its presentation to the jury.

EDITORIAL.

DEFINITIONS OF INSANITY.

SIR JAMES STEPHEN:—

The question “What are the mental elements of responsibility?” is and must be a legal question. It cannot be anything else for the meaning of responsibility is liability to punishment, and if criminal law does not determine who are to be punished under given circumstances, it determines nothing.

I believe that by the existing law of England these elements (so far as madness is concerned) are knowledge that an act is wrong and power to abstain from doing it; and I think it is the province of judges to declare and explain this to the jury.

I think it is the province of medical men to state for the information of the Court such facts as experience has taught them bearing upon the question, whether any given form of madness affects, and in what manner and to what extent it affects either of these elements of responsibility, and I see no reason why, under the law as it stands, this division of labor should not be fully carried out.—(History of Crim. Law of England, p. 183.)

First, then, what is the law of England as to the effect of madness upon criminality? I have stated it as follows in my *Digest* (Art. 27—the parts enclosed in brackets are doubtful):

No act is a crime if the person who does it is, at the time when it is done, prevented (either by defective mental power or by any disease affecting the mind)

(a) From knowing the nature or quality of his act;

(b) From knowing that the act is wrong (variously interpreted as meaning morally wrong and illegal. The word “know” is not so simple as it may appear); or

(c) From controlling his own conduct, unless the absence of the power of control has been produced by his own default.

But an act may be a crime, although the person who does it is affected by disease, if such disease does not, in fact, produce upon his mind one or other of the effects above mentioned in reference to that act.

ILLUSTRATIONS:

1. A kills B under an insane delusion that he is breaking a jar. A's act is not a crime.

2. A kills B, knowing that he is killing B, and knowing that it is wrong to kill B, but his mind is so imbecile that he is unable to form such an estimate of the nature and consequences of his act as a person of ordinary intelligence would form. A's act is not a crime, if the words within the first set of brackets are law. If they are not, it is.

3. A kills B, knowing that he is killing B, and knowing that it is illegal to kill B, but under an insane delusion that the salvation of the human race will be obtained by his execution for the murder of B, and that God has commanded him (A) to produce that result by those means. A's act is a crime if the word "wrong" means illegal. It is not a crime if the word "wrong" means morally wrong.

4. A suddenly stabs B under the influence of an impulse caused by disease, and of such a nature that nothing short of the mechanical restraint of A's hand could have prevented the stab. A's act is a crime if (c) is not law. It is not a crime if (c) is law?

5. A suddenly stabs B under the influence of an impulse caused by disease, and of such a nature that a strong motive, as, for instance, the fear of his own immediate death, would have prevented the act. A's act is not a crime whether (c) is or is not law.

6. A permits his mind to dwell upon and desire B's death; under the influence of mental disease, this desire becomes uncontrollable, and A kills B. A's act is a crime whether (c) is or is not law.

7. A, a patient in a lunatic asylum, who is under a delusion that his finger is made of glass, poisons one of the attendants out of revenge for his treatment, and it is shown that the delusion has no connection whatever with the act. A's act is a crime.

D. R. WALLACE, M. D., Superintendent North Texas Hospital for Insane:—

Insanity is a psychic manifestation of brain disease. Mind capable of discerning between right and wrong, and will power able to control the emotions so as to do the one and refrain from the other, embodies my idea of criminal responsibility as nearly as I can put it in few words.

EUGENE GRISSOM, M. D., Superintendent North Carolina Insane Asylum:—

Insanity is a condition of the mind in which the faculties have been impaired by a diseased condition of the brain. This is the definition I have usually given as a witness in court. To a scientific body I would say:

Insanity is a departure from normal mental life without adequate recognizable causes therefor.

The difficulty of an unobjectionable definition of insanity is apparent, because the pathology upon which it is dependent is not thoroughly understood; it follows, therefore, that the definition can embrace only phenomena or symptoms.

A. C. REID., Supt. Nova Scotia Hospital for Insane:

With regard to the "Definition of Insanity," had you asked me to define it many years ago I think I could have honestly and definitely given it to my own satisfaction, but after eleven years of daily intercourse with and close study in the treatment of the insane, I must confess that I cannot give a concrete definition, as the elder Draper in his physiology says: "What life is we know not, what life does we know well." Put "insanity" in place of "life" in the above quotation, and you have my idea as

clearly enunciated as I can give it, with this proviso that there are two ways of looking at insanity, the one the individual as compared with himself, the other, as he may be compared with some given type of the genus homo, and you can easily see the difference may be very wide. This opens up a subject so wide, that the more one tries to penetrate it the more he "gets into the clouds." I would prefer to remain on "terra" *firma* though the foundation could be scarcely classed as *firma*.

With regard to the question of "right and wrong" (knowledge of) being the basis on which to decide as to the guilt or otherwise of criminals, the more I think of it, the more I read about it, the more firmly I become impressed with the fact that I must be classed with the "old fogies." Some years ago I felt, as I think most alienists now feel, that the judges are behind the age, but I am yearly receding from the "advanced point" and I trust that for the sake of society (which is more to be considered than any number of lunatic criminals) the judges will still cling to the question of "right and wrong" as their basis for action. They have grasped the "kernel" of the controversy and I trust and believe they will not let it slip from them. I have gone through the *cases*, *arguments* and *opinions* of our greatest authorities, and feel that a great deal of it is special pleading in favor of the insane and (as) against society. The late Dr. Grey's evidence in the Guiteau case was, I thought, a most careful, scientific, accurate and just synopsis of the subject. The lives of 1,000,000 Guiteaus would not equal one of such as President Garfield, and I cannot conceive why society should permit the possibility of any one being so attacked, even "if the country were lined with gibbets of slain lunatics" (this is a copied metaphor.) To my mind it is not a sufficient answer to this question to say, place them in confinement for life. My chief objection is on the score of inhumanity. It is less cruel and more kindly to at once allow them to enjoy the pleasures of heaven than live for years in prison. "Do unto others as you would," etc., would regulate my actions in any given case. Again, suppose such a lunatic were to recover, it would not be just or in consonance with advanced science to keep him longer under restraint. If again liberated, then is society exactly in the position it was before the crime was committed, and the "recovered" lunatic may play the same prank over again.

Tersely put, society has no use nor convenience for a class who, knowing what is wrong, have not the will power to prevent themselves from doing wrong. It is useless to imprison them and as far as punishment, for what is assumed to be no crime, why not allow them to sleep, on and on, in this world at least. So far I have not opened up a subject deserving of serious consideration, the influence of such a class amongst lunatics of a different stamp. Murdered superintendents and attendants of asylums show the danger, I would rather say folly, or sin, of such judicial action. I feel confident that society should insist, that every one guilty of intentional homicide, sane or insane (I can see but little difference in the term as illustrated by real life) should be so disposed of, that there would be no possibility of that one again committing such an act. They should be prepared as well as possible for their enjoyment of the future life, and then sent there in the least repugnant and cruel manner.

From the most careful reasoning I cannot help but think that the arguments brought forward to show want of "will power" in so called insane homicides could, with but little stretching, include nine-tenths of the whole lot, and as a reaction from that type of legal decision we would have "Judge Lynch," the "White 'aps" or similar form of (I was going to say) medical jurisprudence.

DANIEL CLARK, M.D., Supt. Insane Asylum, Toronto, Canada :

"Insanity is a fixed physical disease which affects and controls abnormally the language and conduct of an individual." I call it "fixed" to distinguish it from the transitory effects of toxic agents, the delirium of fever, or the passing mania from traumatic injury, or from inflammatory conditions. I attach specific meanings to each word in the definition. The best test of criminal or legal responsibility is included in the above definition. If a man's language and conduct are controlled *abnormally* (*i.e.* is the man not *himself*?) from disease, then is he irresponsible. If there be the smallest thread in the warp or woof of a mind not normal, then it is impossible to say how far it may affect the whole mentality of an individual. Of course the ethical test is supreme nonsense as far as seen in the mental condition of a large number of the insane. The ability *to do* or *not to do*, in other words, the *can* or *cannot* in specific acts, determines the quality of such as far as responsibility is concerned.

ALEXANDER WILDER, M.D.:—

"Insanity is disorder of the volitional nature, attended by moral and physical disturbance. Whatever, therefore, impairs the force of the will, does so much toward rendering the individual not a moral agent. The emotional department of our being is the chief seat of the mischief, and the impairment of vital energy the first physical departure."

As you are seeking definitions in brief, this above belongs only to the two first lines. I will give you that of Dr. Spurzheim, who introduced the Science of Phrenology into America :

"Insanity is the incapacity of distinguishing the diseased functions of the mind, and the irresistibility of our actions, or the loss of moral liberty."

"We are not ourselves when Nature, being oppressed, commands the mind to suffer with the body."

"Inordinate passion of every sort is itself a madness. We know it to be so of anger, and hence how often we call an angry person *mad*."

"When we let our imagination drift at the impulse of every mental suggestion, especially at the prompting of inordinate love of applause, jealousy, greed, or even purer affections, we give up our sanity and make ourselves a prey, not merely to vain imaginings, but to more terrible guests."

When we can agree to mass together like men the little we each know on these matters, it will be easier to do something for the benefit of these most unfortunate of human beings.

ABSOLUTE SIGNS OF DEATH.

DR. B. WARD RICHARDSON recently read a paper before

the Medical Society of London of singular value upon this subject. It is too long for our columns. He gives in detail ten proofs that made would demonstrate that life was extinct.

At the close of his paper, of which an abstract is given in the London *Lancet*, December 15, 1888, he recommended the practical application of five tests, in the following order :

1. Apply the fillet to the wrist and examine the veins at the back of the hand.
2. Open a vein at the bend of the elbow and seek for stringy coagula; open, if necessary, two or more veins.
3. Apply the electric test.
4. Inject ammonia hypodermically.
5. Examine by strong light for absence of red color from the transparent tissues.
6. If any doubt still remained, and rigor mortis had not developed, let the body be kept in a dump room at 84° F.; this would speedily bring about decomposition if the body were dead, and would favor recomposition or restoration if life were not extinct. This last test had the great recommendation that it could be carried out in those cases where it was forbidden to touch the body.

PERSONAL.

DR. COWAN, Superintendent of the Insane Asylum, at Dordrecht, Holland, has been unanimously elected a member of the International Committee on Classification of Mental Diseases, by the Society of Mental Medicine, of Belgium, on the recommendation of *The Nederlandsche Psychiatrische Vereeniging*, in place of Dr. Ramaer, deceased.

DR. VICTOR DESGUIN has been appointed Medical Superintendent of the Insane Asylum at Antwerp, Belgium, Dr. Desguin has a world-wide reputation as an alienist, and it is a rare piece of good fortune for the authorities that such services can be secured for the insane, of the chief maritime city of Belgium.

DR. EMILE COMPEREEN has been appointed Medical Superintendent of the Insane Asylum at Bouchot, Belgium.

MEDICAL JURISPRUDENCE IN BELGIUM.

We notice with pleasure that our gifted colleague, DR. SEMAL, has moved for the formation of a section on Medical Jurisprudence, in the Belgian Society of Mental Medicine.

The proposition was favorably received, was supported by Dr. Jules Morel and Dr. Lentz, and it was decided to invite the Medical Jurists of Belgium to co-operate in their labors.

It is the first, and a most important step towards a Medico-Legal Society in Belgium.

We should be glad to see similar action in the British Medico-Psychological Society.

EXPERT TESTIMONY AND MEDICAL EXPERTS.

DR. ORPHEUS EVERTS contributed a valuable paper on this subject, which was read before the Section on Medical Jurisprudence at the last annual meeting of the American Medical Association.

We quite agree with Doctor Everts

“That Doctors of Medicine as such are not experts in the jurisprudence of insanity.” He says, “But few general practitioners of medicine have either the opportunity or disposition to qualify themselves as experts in this branch of Medical Jurisprudence, and but few voluntarily appear in court, pretending to be such.”

We should go farther, and say: “*That a physician who has not had actual contact with and charge of the insane, either in asylums or institutions, ought not to be regarded as an expert in insanity cases.*”

The law of this State makes any person who has the degree of *M. D.* and three years' practice competent to certify a citizen into an asylum.

This is quite absurd. DR. STEPHEN SMITH, in his proposed new bill, while advancing the strongest arguments in his accompanying remarks for requisite qualifications

in "examiners in lunacy," still leaves this very objectionable clause in the proposed law.

The law should provide that no one should be made an examiner in lunacy, who is not qualified for that position by study, experience and knowledge of that subject.

PARIS INTERNATIONAL CONGRESS OF MENTAL MEDICINE.

Prof. Brouardel has taken the Presidency of this Congress, which assembles in Paris, August, 1889, under the auspices of the French Society of Psychological Medicine. Dr. Ritti is the Secretary, and the committee of arrangements contains such names as FALRET, Benj. Ball, Magnan, Motet.

The session will occupy six days, and contributions are solicited from all countries. The discussions will be confined to members of the Congress who write by correspondence with the Secretary, Dr. Ritti.

THE INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE IN NEW YORK.

This Congress will open in the City of New York under the auspices of the Medico-Legal Society, on the first Tuesday of June, 1889.

Delegates and visitors from abroad or from other States will be the guests of the Medico-Legal Society while in New York, and will be entertained by members of the Society by assignments made on notice to the Committee of Arrangements.

It is important that the title of papers to be submitted, be sent to the President of the Medico-Legal Society as early as possible, so that they may be announced and properly arranged upon the general programme.

As a large number of papers have been already prom-

ised, and far more than can appear in the MEDICO-LEGAL JOURNAL, the transactions and all the papers will be published and furnished to subscribers in a volume, at \$2.00 per copy in cloth, and \$1.50 in paper covers, provided enough subscriptions are received to warrant the same.

Scientific Journals and the public press have widely noticed this Congress, in this and in foreign countries.

From abroad, several prominent scientists are unable to determine so early, whether they will be able to visit America in person, or send on their papers to be read at the Congress. It would be at the present moment a very imperfect list, if we should give one, of delegates from foreign countries.

Fears were expressed at one time that the Paris Conferences next year would prevent some of our most eminent confreres from attending in person ; but as the Paris sessions on scientific questions will be mainly held in August, the dates will not conflict with our Congress, commencing the first Tuesday in June. Foreign visitors can come out at the end of May, and return in the latter part of June or in July in abundant season for the Paris Congress.

Our own members going abroad will not be detained by our Congress, as few will sail before the end of June or early July, while those desiring to visit the Paris Conferences can leave late in July and still be in good season. We give an imperfect and partial list of those who have promised to read papers before the Congress in June, 1889 :

Clark Bell, Esq., of New York.

Chas. H. Hughes, M. D., Editor of *Alienist and Neurologist*.

W. W. Godding, M. Supt. Gov. Insane Hospital, Washington, D. C.

Fred. Peterson, M. D., of New York.

Albert Bach, Esq., New York.

Frank H. Ingram, M. D., of New York.

F. Beltzhoefer, Esq., of Carlisle, Pa.

Benno Loewy, Esq., of New York.

Ex-Chief Justice Noah Davis, of New York.

Judge Montgomery, of the Supreme Court of Washington, D. C.

Judge H. M. Sommerville, of Supreme Court of Ala.

Dr. Wm. A. Hammond, of Washington, D. C.

M. Ellinger, Esq., of New York.

Rev. Wm. Tucker, LL.D., of Ohio.

C. A. F. Lindorme, M. D., of Florida.

John H. Wigmore, Esq., of Boston.

Dr. J. D. Moncure, of Williamsburg, Va.

A. B. Richardson, M. D., of Athens, O.

A. Wood Renton, Esq., of London.

Judge W. H. Francis, of Bismark, Dak., "Expert Testimony in Homicide Cases."

Chas. R. Allison, Esq., of New York.

Austin Abbott, of New York.

S. Hepburn, Jr., Esq., of Carlisle, Pa.

Eugene Grissom, M. D., Supt. N. C. Insane Hospitals

Joseph Jones, M. D., of New Orleans.

Prof. John J. Reese, "Live Birth in its Medico-Legal Relations."

W. Lane O'Neill, Esq., of New York.

Dr. Stephen Smith, Late State Commissioner on Lunacy, of New York.

Prof. C. H. Boardman, of St. Paul, Minn.

Dr. Y. R. Le Monnier, Coroner of New Orleans.

Dr. Norman Kerr, of London, has completed his paper for the June Congress, entitled : "Criminal Responsibility in Narcomania."

As it is quite difficult to write personal letters to our honorary, corresponding and active members inviting contributions of papers for the Congress, it is to be hoped that every one will regard himself as expected to respond, and to write the president if willing to attend, or to contribute a paper when unable to do so.

The detailed programme of the Congress will be sent by circular to members and to the press in ample time before the session.

FIRST VOLUME OF MEDICO-LEGAL PAPERS.

This volume has been a long time out of print, and although we offer \$5.00 per volume for it to fill orders, we are unable to obtain it.

We have decided to print a new edition of this work. It contains also, portraits of prominent early members of the Society.

This edition will be limited to actual subscribers, and will be furnished for \$3.00 in muslin and \$2.50 in paper. It will contain 550 pages besides the additions.

New members will please send in their names to Mr. Clark Bell, 57 Broadway, N. Y., as the work will be sent to subscribers in the order received.

THE PRIZE ESSAYS.

As it is impossible to publish all these papers in the Journal, it has been decided to publish them in book form, so that the members of the Society can obtain them together. The work will contain the three essays which were awarded prizes, and those which were awarded honorable mention, and some of those which were considered by the Committee that are regarded of value to both professions.

Subscribers will be first served at 50 cents in cloth, and 35 cents in paper. Members desiring them will please send orders to this Journal.

RECENT LEGAL DECISIONS.

SYPHILIS COMMUNICATED TO WIFE BY HUSBAND NOT PUNISHABLE UNDER
ART. 24 AND 25 VICTORIA, CAP. 100. (THE PERSON ACT).

In this case the prisoner was charged under the Offenses against the Person Act, 24 and 25 Vict., cap. 100, on two counts, with inflicting grievous bodily harm upon his wife, and with an assault, he having communicated to her a disease. He was convicted at the Central Criminal Court, but the question of whether he could be properly convicted under the statute was reserved for the consideration of this Court, and was argued last term, the judges not being unanimous.

Mr. Justice Wills, the junior judge, first delivered judgement. He said that he was of opinion that the conviction should be quashed. No mention was made in the statute of this class of offences, and the alteration of the criminal law involved, if the conviction were affirmed, would have very widespread consequences. A wide door would be opened to inquiries, not of a wholesome kind, in which the difficulties in the way of arriving at the truth were enormous, and a new field of extortion, and perhaps oppression, would be opened. Such an extension of the criminal law should be made by the Legislature, and by the Legislature only. If the conviction were upheld it raised a question as to persons communicating small-pox or scarlet fever, whereas it was clear that what the Act contemplated was personal violence.

Justices Smith, Mathew, and Grantham also were in favor of the conviction being quashed.

Mr. Justice Stephen said that if the principle involved in the conviction was right, it must apply to women as well as men, and unmarried women as well as wives, and to diseases of any kind communicated by one person to another, and a man who had scarlet fever and shook hands with another might be indicted under these sections. He did not think there was grievous bodily harm or an assault of the nature contemplated by the statute. The abominable nature of prisoner's conduct could not, however, be exaggerated, but the question should be dealt with by statute. He was, therefore, of opinion that the conviction should be quashed.

Mr. Justice Hawkins was of opinion that the conviction should be affirmed. Prosecutions for injuries caused by a kiss or shake of the hand where it was not done maliciously would not be tolerated in any criminal court, but he could conceive cases where these acts were done maliciously, and where proceedings might be taken. He did not think the consequences shadowed forth by his learned brothers would follow if the conviction were upheld, and he could not be a party to a judgment which would proclaim to the world, that under the law of England, in the year 1888, a man might maliciously be guilty of such barbarity and not be punished. He thought the conviction should be confirmed.

Mr. Justice Day, who was absent, concurred, it is said, in this judgment.

Mr. Justice Manisty, Mr. Baron Huddleston, and Mr. Baron Pollock were in favor of quashing the conviction: while Mr. Justice Field thought it should be affirmed, as did also Mr. Justice Charles, who was absent.

The Lord Chief Justice said that for some time he thought the conviction should be affirmed, which he was sure everyone would desire if it could be done with-

out violating the principles of sound law and construction. It seemed, however, impossible in that event to deny that a conviction could be sustained if a father or a relative infected a child with small pox by kissing it they knew they had the disease and the child had not. There being nine judges in favor of quashing the conviction, and four only supporting it, the conviction was quashed, in accordance with the view of the majority. Conviction quashed accordingly. — *British Medical Journal*, Nov. 17, 1888.

TOXICOLOGICAL.

CANNED VEGETABLES AND LEAD POISONING.

At periodic intervals, cases of supposed or suspected lead poisoning from eating canned fruits appear in the lay, and occasionally in the medical press. On being traced they always disappear, and so far as we have been able to learn, no well authenticated fatal case of lead poisoning has ever occurred from the use of tinned or canned meat or fruits.

Professor ATTFIELD has well stated "that the public have not the faintest cause of alarm respecting the occurrence of tin, lead or other metals in canned goods."

And now comes Dr. FALLON PERCY WIGHTWICK to the *London Lancet* and reports three cases which seem to him to justify the medical profession in sounding an alarm against the use of tin in preserving fruit.

On looking into his cases, however, they fail to impress us as sustaining his theory.

One was a case of indisposition after an attack of gout, the symptoms of which resembled lead poisoning, and inquiry showed that the patient for three years ate two tins of canned tomatoes per week, from which the theory is expressed and the conclusion drawn that his trouble must have been due to the tin !

He cites two cases of a mother and daughter, who for three years had also eaten large quantities of canned tomatoes, in each of which cases, where he diagnosed in the mother gemal malaria and occasional colic and gout, which he believes to be lead poisoning, and he charges

it to the canned tomatoes so largely eaten in the past three years.

The proof is very wide of the mark, as is usual in all the cases we have ever known or heard of being traced.

POISONING BY LABURNUM.

Dr. ALEXANDER STEWART, L. K. Q. C. P. I., reports the following case in the *British Medical Journal* of December 15, 1888.

“On October, 23d, my principal, Dr. Lambert, and I were called to attend a child, G. R., aged $2\frac{1}{2}$ years, who three hours previously had swallowed a large number of the seeds of the common laburnum (*cytissus laburnum*). The mother discovered the seeds about its lips, and promptly administered an emetic of mustard, which caused the child to vomit a large number of the seeds, between thirty and forty. The child, however, gradually became worse, and on our arrival was in a semi-comatose condition, the pupils contracted, and the skin pallid and cold, the pulse feeble and quick (140). There were no convulsions. Emesis was produced by mustard and by irritation of the fauces, with the result that between twenty and thirty of the seeds were ejected. Under the influence of stimulants the child recovered in a few hours.

The peculiar points of the case are (1) that the pupils were contracted and (2) that there were no convulsions.”

TRANSACTIONS.

MEDICO-LEGAL SOCIETY.

A regular meeting of the society was held at the Buckingham Hotel, September 12th. The President, Mr. Clark Bell, presided, and the attendance was unusually large.

The following candidates for membership, approved by the Executive Committee, were unanimously elected:

Geo. H. Benjamin, M.D., proposed by Roger Foster; Herman F. Nordeman, M.D., New York, proposed by Benno Loewy, Esq.; Samuel B. Page, Esq., Woodsville, N. H., proposed by Dr. G. P. Conn., and the following, proposed by Clark Bell, Esq.:—John M. Harcourt Steele, Dakota; T. A. Atchison, Esq., of N. Y.; R. P. Talley, M.D., Belton, Texas; H. L. Orme, M.D., Los Angeles, California; R. D. Murray, M.D., U. S. Marine Hospital, Key West, Florida; Charles A. Barnard, M. D., Centredale, R. I.; Lucius F. C. Gavin, M.D., Lonsdale, R. I., George D. Wilcox, M.D., William H. Palmer, M.D., Providence, R. I.; Frank B. Fuller, M.D., Pawtucket, R. I.; Henry E. Turner, M.D., Newport, R. I.; D Stuart Lyon, M.D., Winnimissett, Florida; J. W. E. Smith, M.D., Jasper, Florida; Judge William H. Francis, Bismark, Dakota; James Simpson, M.D., San Francisco, California; A. B. Arnold, M.D., Baltimore, M.D.; James O. Broadhead, Esq., St. Louis, Mo.; E. Mather, M. D. Rotherdam, England.

Dr. Angel M. Alvarez Taladriz, Valladolid, Spain, was elected a corresponding member.

The President stated that he had received the titles of a number of papers to be read at the proposed International Congress, and presented a copy of the new Medico-Legal Spanish Journal, which referred to the Congress and to the Medico-Legal Society. The publication was referred to D. M. Fernandez. (*Revista de Antropologia Criminal Ciencia Medico-Legal*).

The President announced the reorganization of the Committee on Hypnotism, as follows :

Frank H. Ingram, M.D., chairman ; Frederick Peterson, M.D., Emmet C. Dent, M.D., Benno Loewy, Esq., and Geo. F. M. Bond, M.D.

Dr. T. D. Crothers, of Hartford, read a paper entitled "Should Inebriates be Punished by Death for Crime?" This was discussed by Mr. E. W. Chamberlain, Dr. Lucy M. Hall, Dr. Isaac M. Quimby, Dr. Frank H. Ingram, Mr. Clark Bell, Dr. Cleland and Dr. Shephard.

"Physiology and Psychology of Crime," a paper by Rev. Wm. Tucker, D.D., of Mount Gilead, Ohio, was read by Wm. MacArthur, LL.D.

The President, with the consent of the Society, appointed the following members as the Committee on best method of inflicting the death punishment by electricity :

Frederick Peterson, M.D., chairman ; Prof. R. Ogden Doremus, Frank H. Ingram, M.D., J. Mount Bleyer, M.D., and Elbridge T. Gerry, Esq.

A communication from Morris H. Stratton, Esq., of Salem, N. J., was received too late to be read. It was referred to the Executive Committee.

Adjourned.

FRANK H. INGRAM,
Asst. Secretary.

OCTOBER MEETING.

PRESIDENCY OF CLARK BELL, ESQ.

October 8th, 1888.—Society met at Buckingham Hotel.

The minutes of the September meeting were read and approved. The following gentlemen, proposed by President Bell, were, on recommendation of the Executive Committee, duly elected as members of the body:

ACTIVE MEMBERS.

William M. Knapp, M D, Superintendent of Nebraska State Insane Hospital Asylum, Nebraska; Hon. Charles Fowler, ex-State Senator, Kingston, N. Y.; Arthur J. Wolff, M. D., Hartford, Conn.; Millen Coughtry, M. B. C. M., Professor of Anatomy, University of Otago, New Zealand; A. B. Richardson, M. D., Superintendent Insane Asylum at Athens, Ohio.

CORRESPONDING MEMBERS.

Dr. Bettincourt Rodriguez, Editor *Revista de Neurologia*; E. Psychiatria, Lisbon, Portugal; Dr. Semal, Medical Superintendent Insane Asylum, Mons, Belgium.

The paper of the evening was then read by the president in the absence of Dr. T. R. BUCKHAM, on "RIGHT AND WRONG TESTS IN INSANITY CASES." MORITZ ELLINGER, Esq., made an address upon "Hypnotism," which was discussed by the president, Mr. Morris H. Stratton and Mr. Albert Bach.

The Society adjourned.

ALBERT BACH,
Secretary.

NOVEMBER MEETING.

PRESIDENCY OF CLARK BELL, ESQ.

A regular meeting of the Medico-Legal Society of New York was held Wednesday evening, November 14,

1888, at the Hotel Buckingham, President Clark Bell in the chair.

The minutes of last meeting were read and approved.

The following gentlemen, proposed by the President, duly recommended for membership by the Executive Committee, were elected active and corresponding members, respectively :

ACTIVE : Prof. Frank S. Billings, State University, Lincoln, Nebraska ; J. H. Callender, M.D., Sup't. Central Hospital for Insane, Nashville, Tenn. ; G. F. M. Bond, M.D., Sup't. at Ward's Island, N. Y. ; S. Bishop, M.D., Sup't. State Insane Asylum, Reno, Nevada ; W. A. Hall, M.D., Professor of Medical Jurisprudence, Minneapolis, Minn. ; W. J. Scott, M.D., Cleveland, Ohio ; R. E. Smith, M.D., Sup't. Lunatic Asylum, St. Joceph, Mo. ; Wm. C. Wey, M.D., of Elmira ; Herschell Waite, M.D. ; Judge Richard B. Westbrook, of Philadelphia ; Dr. Wm. A. Ward, Conneant, Ohio, and Dr. John W. Waughop, Sup't. Lunatic Hospital, Fort Stillacoom, W. T.

Dr. Guiseppe d'Abundo was elected a Corresponding Member, of Pisa, Italy.

Professor Thwing read his paper on *Euthanasia in Articulo Mortis*, which was discussed by several of the members present, including the Hon. Noah Davis, Dr. Stephen Smith, and President Clark Bell.

President Bell read the paper of A. Wood Renton, Esq., on "Testamentary Capacity in Mental Disease."

The Report of the Committee on Prize Essay Awards was read and accepted.

The prizes were awarded as follows :

First—John H. Wigmore, Esq., of the Boston Bar, "Circumstantial Evidence in Poisoning Cases."

Second—J. Hugo Grimm, Esq., of the St. Louis Bar, “Insanity as a Defense to the Charge of Crime.”

Third—Ed. M. Heyser, Esq., of Jamesville, Wis., “The Insanity of Childbirth in its Relations to Infanticide.”

Honorable mention was made of the paper of John H. Wigmore, “Admissibility of Medical Books in Evidence;” of Dr. Edward Payson Thwing, “A Clinical and Forensic Study of Trance;” and of Clark Bell, Esq., “Belgium and Her Insane Institutions.”

The Report of Committee appointed to determine the best method of execution of criminals by electricity was received, discussion being deferred until December, 1888, meeting.

A communication from William B. Franklin, Esq., U. S. Commissioner General, and Somerville P. Tuck, Assistant U. S. Commissioner General of the U. S. Commission to the Paris Exposition of 1889, inviting the Society to attend the Exposition and participate therein, was read and ordered on file. A Committee to take charge of matters under the communication was directed to be appointed by the President of the Medico-Legal Society.

The following nominations were made, pursuant to the provisions of the by-laws :

For President,

Clark Bell, Esq.
Stephen Smith, M.D.

For Corres. Secretary,

Moritz Ellinger, Esq.

For Chemist,

C. A. Doremus, M.D.

For 1st Vice-President,

W. G. Stevenson, M.D.
Benno Loewy, Esq.

For Treasurer,

E. W. Chamberlain, Esq.

For Trustee.

J. Mount Bleyer, M.D.
Matthew D. Field, M.D.
Roger Foster, Esq.

For 2d Vice President,

W. W. Godding, M. D.

For Librarian,

Charles F. Stillman, M. D.

For Perm. Commission,

Col. R. J. Ingersoll, Esq.
Prof. R. O. Doremus, M.D.

For Secretary,

Albert Bach, Esq.

For Asst. Librarian,

Benno Loewy, Esq.

For Asst. Secretary,

Frank H. Ingram, M.D.

For Curator & Pathologist,

Frederick Peterson, M.D.

Vice Presidents for the States, Territories and Colonies.

Alabama—Judge H. H. Somerville, Montgomery.
 Arkansas—P. O. Hooper, M. D., Little Rock.
 California—W. W. McFarlane, M. D., Agnew.
 Colorado—H. Charles Ullman, Esq., Denver.
 Connecticut—Dr. Henry P. Geib, Stamford.
 Dakota—Judge William H. Francis, Bismarck.
 Delaware—
 District of Columbia—Judge M. V. Montgomery, Washington City.
 England—Prof. Arthur P. Luff.
 Florida—Dr. King Wyll, Sanford.
 Georgia—Dr. Eugene Foster, Augusta.
 Illinois—Dr. E. A. Kilbourne, Elgin.
 Indiana—W. B. Fletcher, M. D., Indianapolis.
 Iowa—Dr. Jennie McCowen, Davenport.
 Kansas—
 Kentucky—Dr. D. W. Yandell, Louisville.
 Louisiana—Dr. Joseph Jones, New Orleans.
 Manitoba—Prof. H. Aubrey, Husband.
 Maryland—H. B. Arnold, M. D., Baltimore.
 Massachusetts—Ira Russell, M. D., Winchenden.
 Michigan—Victor C. Vaughn, Ann Arbor.
 Minnesota—Hon. C. H. Davis, St. Paul.
 Missouri—Judge J. C. Normile, St. Louis.
 Mississippi—Dr. C. A. Rice, Meriden.
 Nevada—Jos. H. Stites, M. D., Belmont.
 New Hampshire—Hon. Daniel Barnard, Franklin.
 New Jersey—Gov. R. S. Green, Elizabeth.
 New Zealand—Prof. Frank G. Ogston.
 Nebraska—Prof. Frank S. Billings, Lincoln.
 New York—A. E. McDonald, M. D., New York City.
 North Carolina—Eugene Grissom, M. D., Raleigh.
 Ohio—W. J. Scott, M. D., Cleveland.
 Pennsylvania—Hon. Henry M. Hoyt, Philadelphia.
 Rhode Island—Henry E. Turner, M. D., Newport.
 South Carolina—Dr. Middleton Michel, Charleston.
 Texas—Hon. Gustave Cook, Houston.
 Tennessee—John H. Callander, M. D., Nashville.
 Vermont—Dr. J. Draper, Brattleboro.
 Virginia—Dr. James D. Moncure, Williamsburg.
 Washington Ter—Ex-Gov. Wm. C. Squire.
 West Virginia—
 Wisconsin—S. B. Buckmaster, M. D., Mendota.

There being no further business before the Society, it adjourned.

ALBERT BACH,
Secretary.

DISCUSSION OF DR. THWING'S PAPER, EUTHANASIA IN ARTICULO MORTIS.

MR. ALBERT BACH: The paper is a very interesting one. The proposition, as I understand it, is this: Has a medical man, in a case where death is inevitable and attended with great suffering, the right to relieve the pain by hastening death? Are there any circumstances under which a medical man has the right to shorten life, deliberately, even at the request of the patient, where death is inevitable? In many cases where animals have met with severe accidents and are suffering greatly, it is humane to kill them. Has a medical man no right to hasten death for the purpose of relieving suffering? "We have," says Benjamin Franklin, "very great pity for an animal if we see it in agonies and death throes. We put it out of its misery no matter how noble the animal." Does it not seem that we should have the right to relieve the pain of one who inevitably must die? It

seems to me that after the calling in of a number of eminent physicians in consultation, as to one suffering from a positively fatal and incurable disease, and in great agony, that a physician is justified in giving to such a patient an anæsthetic to enable him to quietly pass away; for it seems to me inhuman for a physician not to do so when he knows that there is no relief for that pain. There was a lady friend of mine, who died from diphtheria, who wrote on a piece of paper, "Please put me out of my misery; I am choking to death," but the physician would not do anything, and she choked to death. Now what moral wrong is there in putting an end to pain and suffering consequent on the existence of a disease known to be incurable so far as scientific opinion can make anything absolutely certain? If the physician admits that he can do nothing to relieve this dying agony, is not that helplessness to the mind of every human sympathetic person more horrible to contemplate than the giving of an anæsthetic to relieve the conscious agony? There are, indeed, automatic motions which simulate suffering when the patient is unconscious, then there would be no justification in the administration of an anæsthetic. But where the physician knows that the patient is suffering intensely and must soon die, I say that it is humane to put that person out of his awful agony and let him die in peace.

JUDGE NOAH DAVIS : Is a physician justified in taking life under any circumstances? What the law is upon the subject I have no hesitation in answering. Human life is held so sacred by the law that there are no possible circumstances where any human being is justified in purposely taking the life of another human being. The law sacredly guards and protects the right of all and every person to his life. If a doctor, therefore, should ask me

if, under any circumstances, he would be at liberty, if the person inevitably must die, to use any medicine or anæsthetic, or perform any operation, which would undoubtedly kill before the disease killed, I should tell him that he had no legal right to do anything of the kind. The deliberate intention of terminating life would make him guilty of the crime of murder. I can easily conceive of circumstances where a person's death is deemed to be inevitable and intense agony accompanies dissolution, in which a doctor might be justified in using anæsthetics for the purpose of relieving pain, which will, during the struggles of death, make the patient's condition easier, so that the friends around him may be relieved from the suffering they themselves endure, as well as the patient who is about to die. To be justified by law the motive must be simply to relieve the pain of dissolution. The doctor has no right to administer anything with the intention of terminating life. He may be entirely satisfied that life can continue but a few hours or minutes ; he may think that it would be just as well to put the patient out of existence by an operation, but he has no right to do it for that purpose ; yet he has the right to relieve suffering up to the last extremity. Of course, he may operate if he believes the patient may have a better chance for life, and I suppose to a doctor's mind that distinction would be as clear as it is to mine. I do not know of any doctor who has taken upon himself to terminate human life, because he saw that the life must shortly go out in great agony. It is true we feel ourselves at liberty, in the cause of humanity, to destroy the life of animals when suffering from an accident, and it is often done when an animal is very old. The great object of the medical man is the preservation of humanity. The great aim of the noblest of all

professions, as I regard it, is always to preserve life, to prevent disease, to protect human beings from suffering, as far as possible ; but the law has not qualified a body of gentlemen, who adopt this profession, with the right under any circumstances to terminate life. It aids them, protects them, under all circumstances, where they are carrying out the great purpose of their profession in the relief of human suffering, the cure of human disease, and the preservation of human life. Again, it would be a very unsafe proposition to introduce into the law, that doctors may make themselves judges when standing at the bedside of the patient, whether or not the patient must die and thereupon terminate life in order to save pain. It would be a very dangerous power to assume under such circumstances. Doctors are not infallible. They may judge the patient to be in the extremest danger and the case to be absolutely hopeless, yet many such patients have recovered, when friends as well as physicians have given up all hope. It would be unsafe, I think, to entrust any one with such a power as that of destroying life to prevent suffering. Great mistakes might follow from it. Lives might be destroyed which the disease would not have terminated ; and what a terrible thing it would be for us in a case where a doctor had destroyed life to save pain if it should be ascertained that the life would otherwise have been saved ! It would be an extremely dangerous experiment to introduce into the law of the land, the right to take life by deliberately shortening it by an hour or a day. It is not an uncommon thing for a patient to ask for the application of some means or medicine to prevent suffering from the pangs of death, yet doctors all shudder and draw back, and do not use the means under such circumstances. This is all I have

to say on such a serious subject ; I do not think the law ought to be changed.

MR. BACH: "Where would you draw the line between the right of the physician to administer an anæsthetic to give relief, which relief would be practically death, and giving it to kill? How can you determine what is intended? In any event, if he had the right to apply it to give relief, how can you establish that his intention was to kill? How can you establish the fact that the man intended to do anything more than give relief, even if the patient died? If he has the right to give relief, how can you determine that his intention was to kill—as a matter of legal responsibility?"

JUDGE DAVIS: "I would not determine it at all. I would not undertake to draw the line. An intelligent, honest, faithful physician can easily draw it for himself. His mind would be clearly fixed as to the administration of an anæsthetic for the purpose of relieving pain. He would be certain as to the extent of the relief to be administered, and the amount of the anæsthetic needed by the patient. His motives in all such cases must be pure. As to his intention, whether it be to kill or not might be extremely difficult to determine. Perhaps some doctors do act with the intention to kill. I maintain that the profession to which such a doctor belongs should make it hot for him. Now, if the law admitted that for the purpose of making a man's death easier the use of anæsthetics with intent to kill is proper, I think its application would be extremely dangerous. There can be no rule but the simplest one—that the doctors must never kill under any circumstances—and the rule should be always to save, to cure, to preserve life. Ordinary doctors unfortunately often do kill, as I verily believe, by mistaken advice and misapprehension on their own

part, or by innocently using medicines made up by a druggist who does not know his business. But in all such cases, they do not intend to kill, so there is nothing criminal; but they should never have any legalized effort to destroy human life."

DR. STEPHEN SMITH : "I can simply say from my own experience and teachings that no physician should, under any circumstances whatever, shorten life if he can avoid it. He does shorten life—there is no doubt about that—in a great many instances, in the endeavor to save and lengthen life; but the physician has no right to shorten life, even for an hour, to relieve pain or prevent suffering. There are cases which throw great responsibility upon the surgeon especially, and in which the decision of the patient is always taken. The patient is suffering, perhaps, from a disease which will terminate fatally, and an operation may relieve him and lengthen life three, or four years, or even for a longer period. The operation in itself is very dangerous, and the chances are only one in ten that the patient will survive; in such a case as that it is not an uncommon thing to submit the case to the patient. If he chooses to take the chances, the operation is performed. These are not very unusual cases, and the operations are justified in the judgment of surgeons and the world, for it is an attempt to save life and prevent pain though by a very dangerous remedy, and one that in many cases is more apt to prove fatal to life than to save it. I do not know exactly how Judge Davis' law would apply in those cases in which the patient's opinion is taken and his judgment followed, but the surgeon feels that he has relieved himself of all responsibility. I assisted at an operation a few weeks ago where a gentleman from the West suffered from a cancerous disease

which did not cause him a particle of pain. The only remedy was an operation which in nine cases out of ten would prove fatal. He was in fine health otherwise, and was enjoying life with wealth and everything to make him happy. The question was put to him whether he would submit to an operation and take his chances of recovering. He decided that he would, and died the next day. The intention was to save life. The doctors thought that after the operation the disease might never return; without the operation he would certainly die within a few months in great agony, and he had probably reached the point where his sufferings were about to begin. It was a tremendous shock to me—he seemed so strong and well. But he was bound to die. One thing I can say: with the medical profession human life is so sacred that a doctor will even sacrifice his own life to save his patient. That is done oftentimes.”

DR. DWYER: “I was very happy to hear Judge Davis give us in so lucid a manner his opinion on this subject, but I would like to ask the following question: There is one particular occasion where human life is taken where the life of the mother can only be saved by taking the unborn child from her. A great many physicians deem it is wrong, and although the discussion is not on this subject, I should like to hear whether it is legal or not—whether it is legal under any circumstances to take life? Now, there are some circumstances where human life is deliberately taken in order to save the mother in a difficult case of childbirth. The child is known to be living full term and cannot be delivered. The doctors determine that the child must be killed in order to save the mother.”

JUDGE DAVIS: “Under such circumstances, as no motive exists but to save life, the mother’s life, as a matter

of course, should be saved. There is a story—I do not know whether it is true or not—that when the last wife of Napoleon was being delivered, the doctors submitted to him the question: ‘Shall we save the mother or child?’—knowing how anxious he was for an heir. He said: ‘Save the mother.’”

DR. FIELD: “I do not know that the doctor is ever justified in sacrificing the life of the child; there have been operations in which both mother and child have been saved, and I think that the advance of obstetric science to-day would permit the attempt to save both.

DR. DWYER: “I know of a member of the medical profession who within three months allowed his own wife to die because he would not allow some of the most distinguished physicians who attended his wife to remove the child. She was only three months pregnant. I think myself that under no circumstances should the child be killed. I would like very much that the idea should go largely amongst the public that the life of the child should always be saved.”

J. MOUNT BLEYER, M. D.: “I must entirely agree with the remarks of the Hon. Judge Davis, who so ably put before us the law upon that point and his own opinion. The physician’s duty is to save a life and not to dispose of it. To empower a physician with a right and besides back him up by the law, this would, to a certain extent, make him a little god. Besides, where there is life, there is also hope, and no case should be abandoned and given up for dead until such apparent signs show themselves and that there is no room left for doubt. A case comes to my mind of this year’s standing, which was one suffering from diphtheria, a child of five years. I was called in consultation by the family doctor in order to operate it for stenosis of the larynx. From its looks my

prognosis was negative, even after any operation which was to follow. I made known these facts to the family, and they consented that I should try every means that was possible, if only to relieve the symptoms. The first operation by intubing the larynx, no relief was observed. I next made a low tracheotomy, from which also no result could be got. I made my mind up that death was certain within a few hours at the longest. It suggested itself to me that if irritation could be applied to the bronchus through the tracheal wound by means of a catheter, that some chance of loosening the membranes below might take place and thus be a very good means by giving the patient, at least, the last chance for its life. This was immediately tried ; within five minutes a spasmodic cough took place and nearly an entire cost was got out of the bronchi and trachea. The result was that within twelve days from the operation the child's life was recovered. That is sufficient proof to my mind that life can often be saved where otherwise sacrificed. The physician should regard death as an enemy and fight him until one or the other fall."

PRESIDENT BELL: "The case is parallel to that of the late German Emperor suffering in the belief that his disease was incurable. The question was submitted to him, whether he would undergo an operation where more than half the cases terminated fatally, and where, in the majority of cases, the voice was destroyed, if life was saved. He would not submit and did not. The discussion has rather wandered from the paper, because some of the gentlemen did not hear it. The gentlemen who discussed the legal side state it very strongly. What we want to know is this : When a physician is called to the bedside of a dying man, where there is no possibility of recovery, in a disease indisputably fatal, whether he has

the right to apply an anæsthetic—of course, always at the request of the patient, or, if speechless, at the request of his family. The opiate is to relieve his sufferings. In itself, it might end life, but it is administered, not for that purpose, but only to relieve pain. In the case of the child suffering from croup, to whom the physician administered the anæsthetic, it was conceded that the child must die. All the medical attendants considered the case necessarily fatal. I was once present at a case where a child was suffering from cerebro spinal meningitis, and in awful pain. Eminent physicians were consulted, and they all decided that the child must die. I was appealed to as the one who had the best right to decide. Would they be justified in using morphine? I assented. The child was about two years of age. They administered an eighth of a grain of acetate of morphia and followed it by hypodermic injections every thirty minutes until several grains were given, and the child did not die. They all went away saying it would die before night, but it did not die, but lived for several weeks. It died in the end of marasmus. There was no apparent chance of its recovery. I think similar cases are common among medical men, when they believe that death is absolutely certain. They might use anæsthetics, for the purpose of relieving pain, and would pray and hope that it would not kill."

JUDGE DAVIS: "Dr. Dwyer, as I understand him, in the case he mentions, had come to this point: One must die or both. In such a case, as a matter of course, the physician must use his own judgment. The position is somewhat like an accident at sea. There are two persons to save, and the lifeboat will only hold one. They are perfectly justified in saving one. In that case the parties are in the same position before the law. It is

analagous to the case of two persons clinging to a plank; it becomes necessary for one to leave it. The stronger can save himself, by pushing off the weaker. As to the mother and child, it is clear if one does not die, both must die. The physician is put to the necessity of saving one life. Of course, the life to save is the *mother's*. She is a reasoning being. Still, the doctor is not justified in standing by, and saving the life of one by killing the other, unless it is absolutely impossible to save both."

PROFESSOR THWING: "The memorandum presented by me is tentative and interrogative, not declarative. Its aim is to elicit and not to close discussion. The position taken by the paper in regard to the legal responsibility of the medical man in relation to his patient is fully sustained by the luminous statement of Judge Davis. Our humane instincts have found emphatic expression in the remarks of Mr. Bach. Further suggestions as to the clinical and forensic features of the subject will be welcomed, for the last word has not yet been spoken."

ANNUAL MEETING.

PRESIDENCY OF CLARK BELL, ESQ.

December 14th, 1888.—The annual meeting of the Medico-Legal Society was held at the Fifth Avenue Hotel, and had a large attendance. Among those from abroad in attendance were A. P. Sale, M. D., of Miss.; Judge Westbrook, of Philadelphia; J. H. Wigmore, of Boston; Morris H. Stratton, of New Jersey; and Dr. Tourtellot, of Utica.

The chair appointed as tellers to count the votes Messrs. Chas. H. Shepard, M. D., Morris H. Stratton, Esq., and A. M. Fernandez, M. D.

The assistant secretary delivered the ballots he had

received from the members by mail, to the tellers, who proceeded to count them.

Mr. Wigmore, who had been announced to read the first prize essay, "Circumstantial Evidence in Poisoning Cases," asked leave on account of the banquet to read by title, which was granted.

Mr. Henry Guy Carleton, being called away, his paper was read by Dr. Charles F. Stillman, entitled "Death by Electricity in Capital Cases."

The following gentlemen were elected active members, proposed by President Bell, on recommendation of the Executive Committee:

James F. Ringold, Esq., Baltimore, Md.; Ex-Governor Watson C. Squire, Seattle, W. T.; C. H. Wallace, A. M. M. D., Superintendent, &c., St. Josephs, Mo; Edwin Middlebrook, M. D. L. M., F. S. S., Smallthorne, Stoke-on-Trent, England; Samuel Wesley Smith, State Commissioner in Lunacy, N. Y. City; William Byrnes, Esq., N. Y.; Willis Henry Haviland, Jr., Minneapolis, Minn.; Francis B. Smith, M. D., N. Y.; F. A. Stillings, M. D., Concord, N. H.; I. H. Watson, M. D., Secretary State Board of Health, Concord, N. H.

Corresponding:

Dr. Cowan, Superintendent Asylum for Insane, Dordrecht, Holland.

The Committee on Execution of Criminals by Electricity then submitted their report which was read*, and the report and the paper of Mr. Henry Guy Carleton were made the subject of discussion. There was a large attendance of electricians, who were invited by the Chair to take part in the discussion. Remarks were made by Mr. Herman Biggs, Dr. Moses, Mr. Ralph W. Pope, Mr. Harold P. Brown, Ex-Judge R. B. Westbrook,

* This report is published elsewhere in this number.

Dr. Frank H. Ingram, Dr. J. Mount Bleyer, Dr. J. W. Jacoby, S. S. Wheeler, Esq.

Dr. Frederick Peterson, Chairman of the Committee, closed the debate. On motion the report of the committee was unanimously adopted by the Society.

The Chair submitted to the meeting several letters from members in various States, requesting him to vote the ticket which was enclosed, and asked the instruction of the body.

On motion it was resolved that the Chair be requested and empowered to vote as proxy of the members so sending their written requests, and the votes were cast accordingly.

The letters reported that the following gentlemen had been elected to fill the various offices to be filled, by a large majority:

<i>For President,</i>	<i>For Corres. Secretary,</i>	<i>For Chemist,</i>
Clark Bell, Esq.	Moritz Ellinger, Esq.	C. A. Doremus, M.D.
<i>For 1st Vice-President,</i>	<i>For Treasurer,</i>	<i>For Trustee.</i>
W. G. Stevenson, M.D.	E. W. Chamberlain, Esq.	J. Mount Bleyer, M.D. Roger Foster, Esq.
<i>For 2d Vice President,</i>	<i>For Librarian,</i>	<i>For Perm. Commission,</i>
W. W. Godding, M. D.	Charles F. Stillman, M. D.	Col. R. J. Ingersoll, .Esq. Prof. R. O. Doremus, M.D.
<i>For Secretary,</i>	<i>For Asst. Librarian,</i>	
Albert Bach, Esq.	Benno Loewy, Esq.	
<i>For Asst. Secretary,</i>	<i>For Curator & Pathologist.</i>	
Frank H. Ingram. M.D.	Frederick Peterson. M.D.	

Vice Presidents for the States, Territories and Colonies.

Alabama—Judge H. H. Somerville. Montgomery.
 Arkansas—P. O. Hooper, M. D., Little Rock.
 California—W. W. McFarlane, M. D., Agnew.
 Colorado—H. Charles Ullman, Esq., Denver.
 Connecticut—Dr. Henry P. Geib, Stamford.
 Dakota—Judge William H. Francis, Bismarck.
 Delaware—
 District of Columbia—Judge M. V. Montgomery, Washington City.
 England—Prof. Arthur P. Luff.
 Florida—Dr. King Wyly, Sanford.
 Georgia—Dr. Eugene Foster, Augusta.
 Illinois—Dr. E. A. Kilbourne, Elgin.
 Indiana—W. B. Fletcher, M. D., Indianapolis.
 Iowa—Dr. Jennie McCowen, Davenport.
 Kansas—
 Kentucky—Dr. D. W. Yandell, Louisville.
 Louisiana—Dr. Joseph Jones, New Orleans.
 Manitoba—Prof. H. Ausbrey, Husband.
 Maryland—H. B. Arnold, M. D., Baltimore.
 Massachusetts—Ira Russell, M. D., Winchenden.
 Michigan—Victor C. Vanghn, Ann Arbor.
 Minnesota—Hon. C. H. Davis, St. Paul.
 Missouri—Judge J. C. Normile, St. Louis.
 Mississippi—Dr. C. A. Rice, Meriden.
 Nevada—Jos. H. Stites, M. D., Belmont.
 New Hampshire—Hon. Daniel Barnard, Franklin.
 New Jersey—Gov. R. S. Green, Elizabeth.
 New Zealand—Prof. Frank G. Ogston.
 Nebraska—Prof. Frank S. Billings, Lincoln.
 New York—A. E. McDonald, M. D., New York City.
 North Carolina—Eugene Grissom, M. D., Raleigh.
 Ohio—W. J. Scott, M. D., Cleveland.
 Pennsylvania—Hon. Henry M. Hoyt, Philadelphia.
 Rhode Island—Henry E. Turner, M. D., Newport.
 South Carolina—Dr. Middleton Michel, Charleston.
 Texas—Hon. Gustave Cook, Houston.
 Tennessee—John H. Callander, M. D., Nashville.
 Vermont—Dr. J. Draper, Brattleboro.
 Virginia—Dr. James D. Moncure, Williamsburg.
 Washington Ter—Ex-Gov. Wm. C. Squire.
 West Virginia—
 Wisconsin—S. B. Buckmaster, M. D., Mendota.

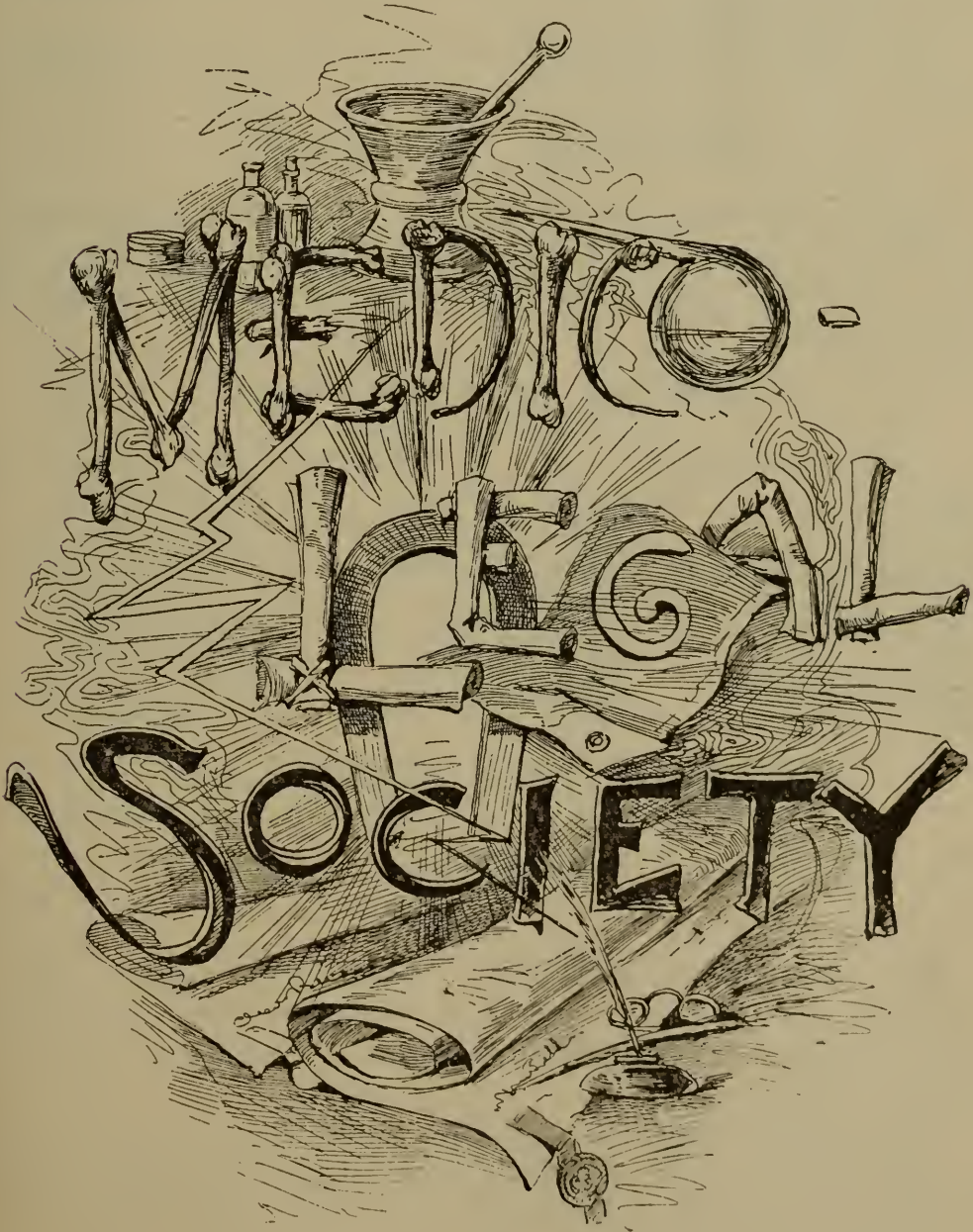
The gentlemen were declared duly elected.

The society adjourned at 9:45 P. M., to attend the annual banquet.

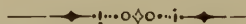
ALBERT BACH,
Secretary.

THE ANNUAL BANQUET.

The following notice had been sent to members of the Society:



Medico-Legal Society.



The Annual Meeting will be held at the FIFTH AVENUE HOTEL, New York, on Wednesday, December 12th, 1888, at 7.30 P. M., precisely.

The following Committee of Arrangements is announced for the

ANNUAL BANQUET

to be given after the session on the evening of Wednesday, December 12th, 1888, at the PALETTE CLUB, 12 West 24th Street, at 9.30 o'clock, P. M., for which tickets will be furnished on application.

COMMITTEE OF ARRANGEMENTS:

CLARK BELL, Esq., *Chairman.*

ALFRED BACH, *Secretary.*

E. W. CHAMBERLAIN, *Treasurer.*

Judge Noah Davis,
Judge D. McAdam,
Judge W. Arnoux,
Isaac Angell, Esq.,
E. W. Chamberlain, Esq.,
W. G. Davies, Esq.,
Judge Jno. R. Dillon,
Judge A. J. Dittenhoefer,
Roger Foster, Esq.,
Judge S. Burdette Hyatt,
S. Hepburn, Jr., Esq.,
Judge S. M. Ehrlich,

Col. R. G. Ingersoll,
Col. E. C. James,
Judge J. H. McCarthy,
Judge Calvin E. Pratt,
Simon Sterne, Esq.,
Nelson Smith, Esq.,
Stephen Smith, M. D.,
Alice Bennett, M. D.,
R. O. Doremus, M. D.,
Wm. F. Holcomb, M. D.,
Frederick Peterson, M. D.,
S. N. Leo, M. D.,

M. J. B. Messemer, M. D.,
D. Matthews, M. D.,
S. B. McLeod, M. D.,
Chas. Milne, M. D.,
Matthew D. Field, M. D.,
R. L. Parsons, M. D.,
Seneca D. Powell, M. D.,
O. D. Pomeroy, M. D.,
Dr. Isaac Lewis Peet,
Ira Russell, M. D.,
G. W. Stevenson, M. D.,
Geo. F. M. Bond, M. D.

SUB-COMMITTEE OF ARRANGEMENTS.

CLARK BELL, Esq., *Chairman.*

E. W. CHAMBERLAIN, *Treasurer.*

Chas. F. Stillman, M. D.,

M. Louise Thomas,
J. Mount Blyer, M. D.,

E. M. Mosher, M. D.,

ALFRED BACH, *Secretary.*

The attendance of Ladies at last year's banquet was so successful, that members are requested to bring their wives or lady friends. The price of seats is fixed at \$2.00 each, exclusive of wine.

The annual election of officers will take place, and members can obtain their election lists to vote, by mail, on payment of dues to the Treasurer, Mr. E. W. Chamberlain, No. 120 Broadway, New York.

Election lists will be forwarded by the Assistant Secretary to all members only whose dues are paid. Members in arrears will please remit or they will not be entitled to vote.

The Following Officers were Nominated at the November Meeting.

<i>For President,</i> Clark Be'l, Esq., Stephen Smith, M. D.	<i>For Assistant Secretary,</i> Frank H. Ingram, M. D.	<i>For Curator & Pathologist,</i> Frederick Peterson, M. D.
<i>For 1st Vice President,</i> W. G. Stevenson, M. D.	<i>For Corresponding Secretary,</i> Moritz Ellinger, Esq.	<i>For Chemist,</i> C. A. Doremus, M. D.
<i>For 2d Vice President,</i> W. W. Godding, M. D. Benno Loewy, Esq.	<i>For Treasurer,</i> E. W. Chamberlain, Esq.	<i>For Trustees,</i> Roger Foster, Esq., J. Mount Blyer, M. D., Matthew D. Field, M. D.
<i>For Secretary,</i> Albert Bach, Esq.	<i>For Librarian,</i> Chas. F. Stillman, M. D.	<i>For Perm. Commission,</i> Col. Robt. G. Ingersoll, Prof. R. O. Doremus.
	<i>For Assistant Librarian,</i> Benno Loewy, Esq..	

Vice Presidents for the States, Territories and Colonies.

Alabama—Judge H. H. Somerville, Montgomery.	Mississippi—Dr. C. A. Rice, Meridian.
Arkansas—P. O. Hooper, M. D., Little Rock.	Nebraska—Prof. Frank S. Billings, Lincoln.
California—W. W. McFarlane, M. D., Agnew.	Nevada—Jos. H. Stites, M. D., Belmont.
Colorado—H. Charles Ullman, Esq., Denver.	New Hampshire—Hon. Daniel Barnard, Franklin.
Connecticut—Dr. Henry P. Geib, Stamford.	New Jersey—Gov. R. S. Green, Elizabeth.
Dakota—Judge William H. Francis, Bismark.	New York—A. E. McDonald, M. D., New York City.
Delaware—	North Carolina—Eugene Grissom, M. D., Raleigh.
District of Columbia—Judge M. V. Montgomery, Washington City.	Ohio—W. J. Scott, M. D., Cleveland.
Florida—Dr. King Wylly, Sanford.	Pennsylvania—Hon. Henry M. Hoyt, Philadelphia.
Georgia—Dr. Eugene Foster, Augusta.	Rhode Island—Henry E. Turner, M. D., Newport.
Illinois—E. A. Kilbourne, Elgin.	South Carolina—Dr. Middleton Michel, Charleston.
Indiana—W. B. Fletcher, M. D., Indianapolis.	Texas—Hon. Gustave Cook, Houston.
Iowa—Dr. Jennie McCowen, Davenport.	Tennessee—John H. Callander, M. D., Nashville.
Kansas—	Vermont—Dr. J. Draper, Brattleboro.
Kentucky—Dr. D. W. Yandell, Louisville.	Virginia—Dr. James D. Moncure, Williamsburg.
Louisiana—Dr. Joseph Jones, New Orleans.	Washington Ter.—Ex-Gov. Wm. C. Squire.
Maryland—A. B. Arnold, M. D., Baltimore.	West Virginia—
Massachusetts—Ira Russell, M. D., Winchenden.	Wisconsin—S. B. Buckmaster, M. D., Mendota.
Michigan—Victor C. Vaughn, Ann Arbor.	
Minnesota—Hon. C. H. Davis, St. Paul.	Manitoba—Prof. H. Aubrey, Husband.
Missouri—Judge J. C. Normile, St. Louis.	New Zealand—Prof. Frank G. Ogston.
	England—Prof. Arthur P. Luff.

The Meeting will be held at 7.30 P. M., sharp, Fifth Av. Hotel, to finish early, in season for the Banquet. A paper will be read by HENRY GUY CARLETON, Esq., on
"Death by Electricity in Capital Cases."

By JOHN H. WIGMORE, Esq., *"Circumstantial Evidence in Poisoning Trials."* (This is the prize essay that won First Prize.)

THE REPORT OF COMMITTEE, on *"Best Method of Executing the Law, punishing Criminals in Capital Cases by Electricity,"* will come up for discussion.

Members desiring to complete their contributions to the Library of the Society, should do so on or before the annual meeting, to enable the Library Committee to complete their annual report for the year.

It is earnestly hoped that members generally will be present at the Annual Meeting and at the Banquet. Members will please notify the Chairman or Secretary of Committee, the number of seats they require for themselves or friends, which will be reserved in the order of their receipt.

By order of the President,

ALBERT BACH, Sec'y.

The banquet was given in the parlors of the Palette Club which were tendered the Society for the purpose.

A large and brilliant company sat down at 10 o'clock to the annual banquet. Mr. Clark Bell presided. Representatives from the leading societies of the city were present, and letters of regret were read from the Presidents of the Academy of Medicine and the Bar Association, who were unable to be present. Letters of regret and sympathy were read from the Presidents of the Mass. Medico-Legal Society, the Chicago Medico-Legal Society and that of Philadelphia.

Speeches were made by Dr. Isaac N. Quimby, Dr. Lucey M. Hall, Mr. Albert Bach, Mr. Morritz Ellinger, Dr. Jacoby, President of Neurological Society; Dr. George F. M. Bond, Superintendent Asylum at Ward's Island; Dr. Matthew D. Field, Dr. Samuel Wesly Smith, State missioner in Lunacy; Dr. Frank Ingram, Mrs. Frank Leslie, for the *Press*; Mrs. M. Louise Thomas, Mr. Atwell, for the *New York World*. Mrs. Ella Wheeler Wilcox and Mrs. Harriet Webb gave recitations, and Mrs. Dr. Isaac Lewis Peet, a deaf mute, gave an address in the sign language which was interpreted to the company by Dr. Peet and was received with great favor. The banquet was a decided success.

JOURNALS AND BOOKS.

RIVISTA SPERIMENTALE DI MEDICINA LEGALE.—Founded by Prof. CARLO LEVI, and conducted by Profs. AUGUSTO TAMBURINI, CAMILLO GOLGI, ARRIGO TAMASSIA and ENRICO MORSELLI, and an able corps of collaborators, is a leading journal of forensic medicine in Italy. It completes its thirteenth volume at close of 1887. This volume contained original articles by Montalti, Nicoletti, Tonnini, Raimondi, Rezzonico, Tamburini, Marina, Tamassia, Guicciardi, Petrazzani, Pellacani, Sighicelli and Tambroni on various topics of forensic medicine. It has devoted great space to Criminal Anthropology, reviewing the leading French, German and Italian writers.

In Toxicology it has reviewed the writings of Brouardel, Vulpian, Laton, Poleck, Garnier, Schlagenhafen and Bruneau. It has given considerable space to the general papers on Medico-Legal topics, of the French, German and Italian writers; but has not given the space to English, American, Russian or Scandinavian thinkers, one would expect from such eminent Italian savans and scientists. The volume (13th) has been equally rich in neurological studies, psychiatry and forensic medicine; especially so in anatomy, physiology, nervous and mental pathology and the progress of these sciences. It has deserved a great renown, for the ability of its original articles, but more, for the masterly and scholarly work of its editorial staff. It is a journal no American alienist should be without, who aims to survey the whole field of forensic medicine, and it ably illustrates the great excellence, industry and learning of our Italian *confreres*, in the study, progress and development of the science of medical jurisprudence.

THE CASE OF EMPEROR FREDERICK III.—(EDGAR S. WERNER, N. Y., 1888). This volume gives without comment a translation of the Full Official Reports of the German Physicians, as made by Dr. Henry Schweig, containing not quite 100 pages as the first part, and the Report of Sir Morell Mackenzie, 276 pages, as the second. The story is not as creditable to the medical profession, as it is to the noble and heroic character of the dead Emperor.

We need not pass on questions of veracity between the physicians. The German doctors had diagnosed a malignant tumor and fixed a day for surgical intervention, when the advent of Dr. Mackenzie on the eve of operation arrested it, conditional that Dr. Virchow, of recognized skill, should determine by examination of sections of the tumor the character of the growth. Virchow's reports justified the delay of the proposed surgical operation.

It is absurd to say that the sections submitted were not properly or skillfully selected. The German physicians, if in doubt, would be as much to blame as Mackenzie, if such was the fact. It is simply out of the question.

The later fatal changes, the jealousy and enmity of some of the German, the charges, recriminations and all the scandalous quarrels of the doctors, are sorry features of a noble struggle by a grand, brave man, for the lengthening of a life so dear to Germany.

Whatever men may think of the charges made against Dr. Mackenzie by the local physicians, or of his grave criticism of the treatment of Dr. Gerhardt and the false passage of Dr. Bergeman, all must concede that Sir Morell Mackenzie retained through all and, until the last, the affection and confidence of the Emperor and of the family. This patient was singularly intelligent, as to the character, history and development of the malady, kept himself constantly and well advised of the various questions and difficulties, and behaved throughout with such a courage and manliness as has commended him to all.

LOUISIANA STATE MEDICAL SOCIETY.—The tenth annual report of this society contains four papers of interest to medico-legal students.

1. The address of Dr. Joseph Jones, president, is a masterly production, going over the whole range of medical science. We give entire his section on

MEDICAL JURISPRUDENCE.

The duty of the physician is not merely to prevent and cure diseases, but he is the natural guardian of the lives of his fellow-citizens, by detecting poisons, and pointing out the nature of the weapons, and injuries inducing death.

The scientific physician has often to summon all his skill and wisdom, and press into the public service, all his knowledge in chemistry, microscopy, physiology and pathology, in the investigation of cases of poisoning, rape and injuries inflicted by firearms and weapons of every description. The life of a human being often turns upon the decision of the chemist and microscopist, as to the nature of the spot or stain upon a garment, whether paint or blood, or upon the determination of the presence or absence of arsenic, antimony, lead, morphia, strychnia or some other poison in food, drink or in the stomach, and organs of man.

We cannot overestimate on the one hand, the responsibility of the conscientious and learned physician, who undertakes a medico-legal investigation; and on the other the obligations of the public, for the invaluable services rendered to law and justice by exposing crime, which, but for the learning of the chemist, microscopist and pathologist, would remain forever hidden.

We may truly say that the scientific and pure-minded physician is the natural and ordained guardian of the public peace and health.

A knowledge of medical jurisprudence necessitates the careful study of the following branches of science:

- (a) Chemistry (qualitative and quantitative analysis).
- (b) Toxicology.
- (c) Microscopy. Spectroscopic analysis.
- (d) Physiology.
- (e) Pathology.
- (f) The general principles of civil and criminal law, as applicable to

idiocy, imbecility, insanity, illegitimacy, rape and murder, or attempt to murder, by firearms, instruments of all kinds, by drowning, strangulation and poisoning. This report also contains :

2. An oration by Hon. A. A. Gerrity, of Monroe, La., on "Death."

3. A paper by J. W. Dupree, M. D., of Baton Rouge, La., on "Gunshot Wounds of the Abdomen"; and

4. An elaborate paper by Dr. Joseph Jones on Teratology, giving detailed accounts of the most celebrated cases of monstrosity of our day, with cuts and illustrations.

INSANITY, INEBRIETY AND CRIME.—DR. RICHARD H. KINKEAD, Lecturer on Medical Jurisprudence, Queen's College, Galway Ireland, has contributed a brochure containing four of his articles in a neat volume, which merit more than a word.

His essay on "Insanity and Crime" is an elaborate reply from the medical side to Baron Bramwell's article in the *Nineteenth Century Magazine*. It is an able paper and like that of Sir J. Crichton Brown, in the *London Lancet*, deserves the thanks and praise of medical men.

"A Fatal Love," his second paper, gives in the form of a story, a strong, psychological presentation of the writer's views.

"Inebriety and Crime," the title of his third essay, is also an able paper much in the line of the studies given in the recent volume published by the Medico-Legal Society, entitled "Medical Jurisprudence of Insanity." And his last paper, a "Medico-Legal Study," is a critical review of the remarkably strange case tried in July, 1887, at Galway, before Chief Baron Palles and a jury, where the problem was whether the accused was drunk or insane, or whether death had occurred before the burning of the body, which seemed to be the view of the medical experts.

The whole monograph is well worth a place on the expert's library shelf, and Dr. Kinkead has won the thanks of both professions by his ability in its production.

THE LIFE INSURANCE EXAMINER. By DR. CHAS. F. STILLMAN. (The Spectator Co., N. Y.). 1888.

The enormous growth in America of Life Insurance, its probable increase to the close of the present century, must arrest the attention of all thoughtful minds. The companies, while realizing that success depends in the end upon the fidelity and skill with which the medical examinations are conducted have not as such given their attention to this most important subject, and have relied on their medical men.

When we reflect how recent has been the growth of Life Insurance in this country, and how little care has been taken in the selection of medical advisors for Life Insurance Companies, we need not wonder at the present status of the question from a purely scientific and medical standpoint.

The Life Insurance Companies offered a refuge and medical hospital, for these medical men who had failed in general practice, and the relatives of the officials, usually found here remedies for their failures as practitioners.

Dr. Stillman is one of our rising medical men, of great ability, and just fitted to grapple with the question. The volume he has presented goes over the whole field of the duty of the medical examiner. It will be the text book for the companies.

Upon the legal questions Dr. Stillman has given space to the views of Mr. John M. Taylor, Vice-president of the Conn. Mutual Life Insurance Company, and quotes largely from his recent valuable pamphlet.

This branch of the subject deserves an exhaustive treatise. If Mr. Taylor would give it such study as its importance demands, and go to the bottom, he would deserve the thanks of all interested in Life Insurance.

The legal aspects of these questions must soon be written fully and elaborately.

Books, Journals & Pamphlets Received.

R. W. POPE, ESQ.—Transactions American Institute Electrical Engineers, September 1888.

Electrical Review, Nov. 24, 1888.

ERNEST H. CROSBY, ESQ.—Fifteenth Annual Report N. Y. State Commissioner in Lunacy (1887).

SAMUEL WESLEY SMITH, M.D.—Fifteenth Annual Report State Commissioner in Lunacy (1887).

STEPHEN SMITH, M.D.—Fifteenth Annual Report State Commissioner in Lunacy (1887).

PHILIP COOMBS KNAPP, A.M., M. D.—“Concussion of the Spine.” “Railway Spine.” “Railway Brain.” Cupples & Hurd, Boston (1888).

DR. A. P. REID.—Thirteenth Annual Report for Nova Scotia Hospital for Insane (1887.)

CHARLES C. SOULE, Boston.—Stimson's American Statute Law (1886). Stimson's American Statute Law, 1st Supplement (1886-1887.) Will review in March number.

P. BLAKISTON, SON & Co. (PHIL).—Reese Medical Jurisprudence and Toxicology, 2d edition (1889).

J. Z. GERHARD, M.D., Supt. etc.—All the Reports of the Penn. State Hospital at Harrisburg except the 23d (1873).

DR. J. BEMAN LINDSLEY.—Bulletin State Board Health, Tenn. Vol. 4, No. 6.

DR. JOHN C. LE GRAND.—Alabama Medical and Surgical Age. Vol. 1, No. 2.

DR. EUGENE GRISSOM.—Report North Carolina Insane Asylum for 1887 and 1888.

DR. P. BRYCE.—Report for Alabama State Hospital for 1887 and 1888. Bi-annual.

JOHN B. HAMILTON, M.D.—Annual Report of Supervising Surgeon General of Marine Hospital Service. U. S. (1888).

W. B. PRITCHARD, M. D.—Manual of Dietetics (Dietetic Pub. Co.)

MAGAZINES.

SCRIBNER'S has a splendid Christmas number and announces an increased circulation.

LIPPINCOTT'S.—The proprietors have made a great hit by printing an entire serial story with each number.

MAGAZINE OF AMERICAN HISTORY.—Mrs. Martha J. Lamb has the faculty of making, once in a while, a number of surpassing excellence.

LITTELL'S LIVING AGE.—It has lost none of its power and keeps to its old standard.

THE ECLECTIC commences its 49th volume with January, 1889, of the New Series, and its selections are excellent.

THE NORTH AMERICAN REVIEW.—Mr. Allen Thorndyke Rice has made this *Review* second to none in this country in interest, for the thoughtful, cultured reader.

THE AMERICAN MONTHLY shows a marked improvement in the artistic merit of its illustrations as well as in the character of its articles.

THE CHAUTAUQUAN.—Dr. Theo. L. Flood, editor of this journal, has succeeded in giving more useful, scientific knowledge, in an attractive form, for the general reader, than any of the popular scientific journals of this or any other country with which we are familiar.

THE CRIMINAL LAW MAGAZINE.—Stewart Rapalji, Editor. We are glad to welcome this journal to our exchange list. Its ablest article is by J. T. Ringold, Esq., on "The Theory of Culpability." It is an admirable view of the "Right and Wrong" test in Insanity Cases, and is one of the most notable contributions to the literature of this subject of our day.

Mr. Ringold's paper will be read with interest by every student of the subject in both professions, and it should be printed as a separate brochure for the bar.

THE FORUM.—Charles Dudley Warner writes a thoughtful article, "Creating Criminals," in the November number. Dr. Austin Flint treats of "A Possible Revolution in Medicine," and Prof. Crookes of "The Role of Chemistry in Civilization," in the December number, 1888.

THE INTERNATIONAL RECORD.—Dr. Frederick Howard Wines edits this journal, and we cannot say enough in praise of its value to all students of Criminality, and our system of charities, prisons and social reform.

THE CHICAGO LAW JOURNAL.—This journal has changed hands and apparently its policy. The January number will, it is announced, be "virtually the initial number."

Dr. Harold Meyer, of Chicago, will contribute the leading article on "Insanity as a Defence." He is at present county physician of Cook County. We hope it will not drop its column on Medical Jurisprudence.

THE LONDON MEDICAL RECORDER.—There is no English journal which keeps abreast the progress of thought in all the medical sciences, as well in England as throughout the world, as this monthly.

Mr. Ernest Hart has organized a staff of the most skilled writers upon every branch of medical science, and they give in this journal the meat of all the scientific journals of the day on medical questions. It is a very valuable journal, as well to the specialist as the general practitioner.

THE AMERICAN JOURNAL OF INSANITY.—We are glad to see this valuable journal publish portraits of distinguished men. An excellent one of Dr. Chas. H. Nichols graces the January number.

Dr. Walter F. Channing criticises Dr. Smith's proposed Lunacy Legislation. Dr. Wise gives an able paper on "The Legal Responsibility of Epileptics," and Dr. Andrews, of Buffalo, discusses "State vs. County Care" with ability. Dr. Blumer is keeping up the standard of this journal.

THE COSMOPOLITAN.—We like this journal. Its illustrations are fine and it constantly improves.

THE ASCLEPIAD. — Dr. Richardson throws a vast deal of the energy that has characterized his life and career into the pages of this journal.

THE CARTOON.—This is a new illustrated humorous weekly. James Clanen Harvy is editor. Thos Fleming, art editor. and John W. McDonald, publisher. These gentlemen are competent to do this work well, and we wish them "all success."

*STATE INSANE ASYLUM, AT MIDDLETOWN,
NEW YORK.*

This Institution was organized in 1869, by DR. GEORGE F. FOOTE, and was an effort to found a private asylum towards which about \$75,000 was subscribed.

The movement, however, not progressing fast enough, it was conveyed to and accepted by the State, and in 1870, the Legislature made an appropriation and organized a Board of Governors.

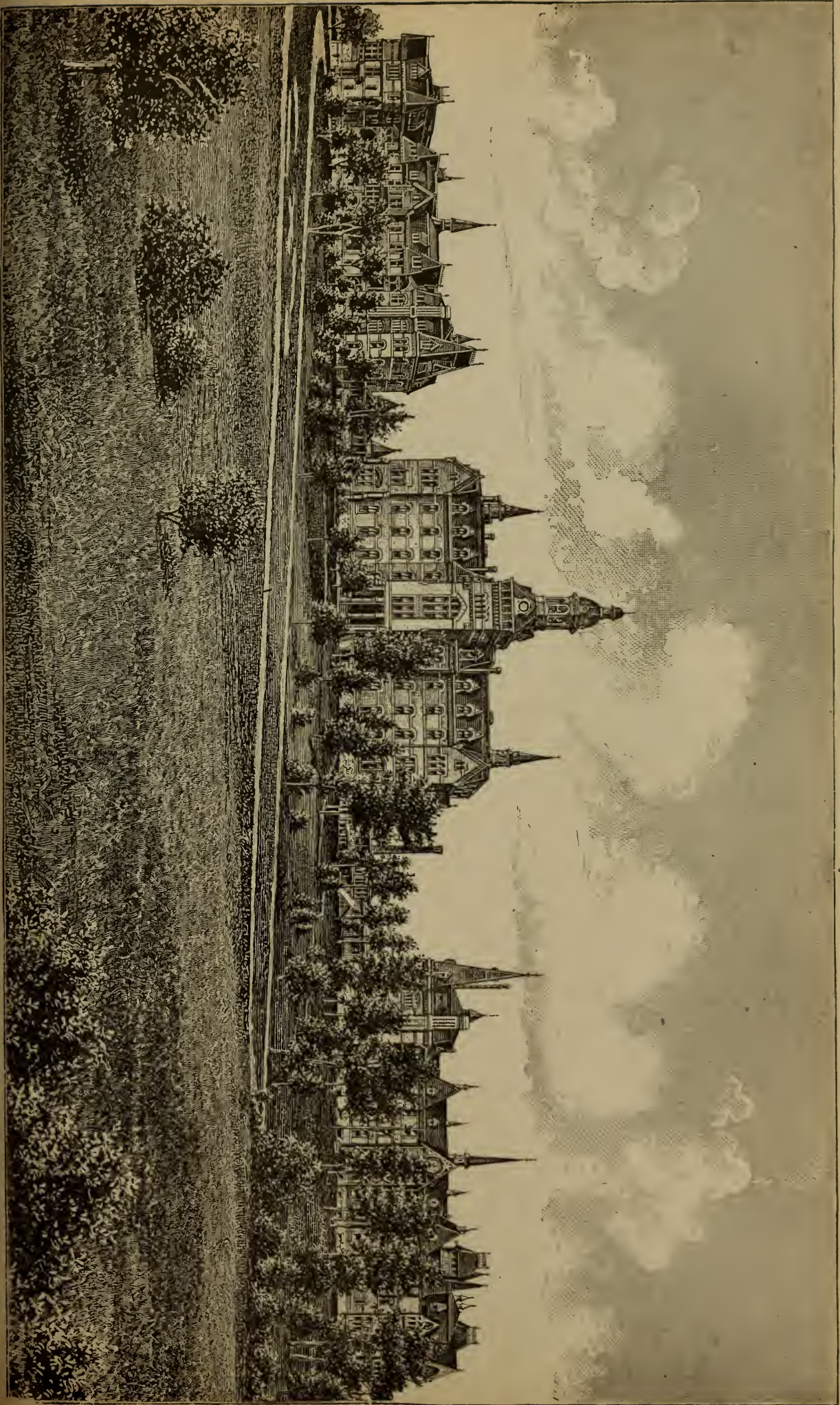
The amount contributed by the State for this institution was in 1885, about \$607,000.

Since that date about \$100,000 has been expended in constructing two large blocks of day rooms, and an elaborate kitchen, bakery and store room combined.

The first patient was received in April, 1874. Dr. Foote, having resigned, DR. HENRY R. STILES was made Superintendent in charge, which position he held till his resignation, February 9, 1877. He was succeeded by DR. SELDEN H. TALCOTT, who has since remained in charge.

The first officials of the Board of Trustees were: FLETCHER HARPER, President; GRINNELL BURT, Vice-president; PETER S. HOE, Treasurer; M. D. STIVERS, Secretary, and these officers have remained unchanged from the first except that when PETER S. HOE resigned in 1876, UZAL T. HAYS was made and still continues Treasurer. This Asylum has a farm of 211 acres well stocked, and a garden of about 5 acres, which supplies it with vegetables and fruits, milk and hay.

The total number of patients treated in this Asylum from May, 1874, to September 30, 1888, was 2,397, of



whom 908 were discharged as recovered. It has a present capacity of about 550 patients, and is nearly full.

This Institution has made a low price for patients in moderate circumstances from \$6 to \$4 per week. and has accommodations for the rich patient. as well as the poor.

It has been practically self-sustaining for the past ten years, aside from the amounts given by the State for property and buildings and the salaries of the officials. The State appropriated \$25,500 in 1888, which was devoted to additional buildings, aside from salaries. It maintains a school for patients of each sex, and a training school for nurses. There have been twenty buildings and additions added to this Institution since 1877, and the establishment is one of the most complete and perfect in this country, presenting an admirable home like effect, which is as much a pleasure to the inmates as to the visitor.

SELDEN HAINES TALCOTT, A. M., M. D.

Dr. Talcott accepted the position of Superintendent of the State Insane Asylum at Middletown, New York, in 1877, on the resignation of DR. HENRY R. STILES. He has held that position ever since with great success, and has done much to give to that institution the well deserved popularity which it enjoys.

He is a thorough student, an ardent lover of his profession, and has visited the leading European institutions, with greatest interest and zeal, to secure all knowledge that will advance the institution of which he has been so long the medical head.

Dr. Talcott entered Hamilton College in 1864, but shortly after enlisted in the Union army and served in the army of the Potomac in the 15th regiment, New York volunteer engineers, serving mainly as dispatch messenger to the colonel.

He returned to the college in the Fall of 1865, and graduated from Hamilton in the Summer of 1869, where he took honors.

He graduated March 1, 1872, from the Homeopathic Medical College, and delivered the valedictory address.

In September, 1875, he was appointed Chief of Staff to the Homœopathic Hospital on Ward's Island, New York City, where he remained until appointed Superintendent of the Insane Asylum at Middletown, New York.

Dr. Talcott is a contributor to the medical literature of the time, and is the author of valuable papers, among which are "Prognosis in Insanity," "General paresis,"

“Medical Notes on the Treatment of the Insane,”
“Mania, Its Causes, Courses and Treatment,” “Melan-
cholia with Stupor,” “Rhinositis in Relation to Insanity,”
“Delusions of the Insane,” “The Insane Diathesis,”
“Sleep without Narcotics,” “Nutrition in Mental Dis-
ease,” “Laws of Commitment and Care of Insane,”
“Traumatic Insanity and Traumatic Recoveries.”

Dr. Talcott has been President of the Medical Society of the counties of Oneida and Orange, of the State Homeœopathic Society of New York, and is now President of the oldest national medical organization, the American Institute of Homœopathy, and a member of the American Association of Medical Superintendents of Insane Asylums. He has been elected honorary member of the Massachusetts Homœopathic Society, as well as that of Northern New York. Dr. Talcott has received the degree of M. D. from the Regents of the State University. He was for four years lecturer on mental and nervous diseases in Hahneman Hospital, Philadelphia, and has been for many years professor of mental and nervous diseases in the Homœopathic Medical College of New York City. Dr. Talcott is one of the foremost alienists of his school, and has so blended his life with the institution of which he is chief ; that it may be said he has no higher ambition, than to there carry to completion, his views as to the hospital system, the college system, and the foster parent system of caring for the insane, a work for which he is most admirably equipped by education, experience and training, and into which he has entered with his whole heart.

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*Deceased.



Yours Sincerely

Albert Pack
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*NINTH INAUGURAL ADDRESS.**

OF CLARK BELL, ESQ.

AS PRESIDENT OF THE MEDICO-LEGAL SOCIETY.

FELLOWS OF THE MEDICO-LEGAL SOCIETY :

I have to thank you for your great partiality and kindness in again placing me in this chair, with such unanimity, as well as for the kind manner in which you have aided the chair in the very important, and responsible labors of the year.

MEMBERSHIP.

The Roll of Membership of this body, on December 31, 1887, was 432, composed as follows : Active, 273 ; corresponding, 148 ; honorary, 11.

Of these, among active members there were : Lawyers, 138 ; doctors, 124 ; scientists, 11.

Of corresponding, there were only 19 lawyers, 119 physicians, and scientists, 10. Of the honorary members, 5 were legal and 6 medical, making a total of legal, 163 ; medical, 248 ; scientific, 21. There was upon the roll 594 members, on December 31, 1888, of whom 429 are active, 154 corresponding, and 11 honorary.

We have elected during the year 163 active and 10 corresponding members, a total of 173, and our present active membership is composed among active of : Legal, 158 ; medical, 254 ; scientific, 17. Our corresponding, of legal, 20 ; medical, 124, and scientific, 10, with 5 legal and 6 medical on the honorary list.

So that in our total membership at the close of the

*Pronounced January 9, 1889.

past year, December 31, 1888, we had : Legal, 183 ; medical, 384, and scientific, 2 .

We have lost by death 7 active and 4 corresponding, making a total of 11, and our increase of active and corresponding membership over deaths, resignations and suspensions, has been for the year : Active, 156 ; corresponding, 6. Total, 162.

NECROLOGY.

The loss by death among the active members has been seven :—Dr. James Craig, of Jersey City ; Dr. A. J. Chadsey, of New York ; Hon. W. A. Dorsheimer, of New York ; Hon. Chas. Hughes, Sandy Hill, N. Y. ; Cornelius A. Runkle, Esq., of New York ; M. N. Miller, M.D., of New York, formerly assistant secretary of the society ; Dr. O. H. Kellogg, of Indiana ; J. E. McIntyre, Esq., formerly secretary of this society, and late of California ; and of the corresponding members, Achille Foville, M.D., of France ; J. N. Ramaer, of Holland ; Prof. Augustin Andrade, of Mexico ; Dr. Enrique a Frimont, of Ozuluamo, Mexico.

THE WORK OF THE YEAR.

The following papers have been read before the Society and many of them published in the MEDICO-LEGAL JOURNAL :

“ Eighth Inaugural Address,” by Clark Bell, Esq. ; “ Criminal Jurisprudence,” by P. Bryce, M.D. ; “ Best Methods of Executing Criminals,” by J. Mount Bleyer, M.D. ; “ Hypnotic, Trance and Kindred Phenomena,” by E. P. Thwing, M.D. ; “ The Menopause in relation to Insanity,” by T. R. Buckham, M.D. ; “ The Prognosis of Pelvic Cellulitis,” by W. Thornton Parker, M.D. ; “ Possibility of Air in Heart in Infanticide,” by F. W. Higgins, M.D. ; “ The After-death Absorption of Arsenic,”

by Geo B. Miller, M.D.; "Report of Committee on Best Methods of Capital Punishment"; "Medical Jurisprudence of Inebriety," by Mary Weeks Burnett, M.D.; "American Life as related to Inebriety," by Edward Payson Thwing, M.D.; "Rape by Boys," by Daniel Brinton Esq., of Baltimore; "A Case of Supposed Abortion," by W. Thornton Parker, M.D., of Newport; "Report on Nationalization of the Society," by the President, Clark Bell, Esq.; "Is Belief in Spiritualism ever Evidence of Insanity *per se*?" By M. D. Field, M.D.; "The Webber Murder Case, in Philadelphia," by Wm. Wilkins Carr, Esq., of Philadelphia; "The New Judicial Departure in Insanity Cases," by Clark Bell, Esq.; "Should Inebriates be Punished by Death for Crime?" by T. D. Crothers, M.D., of Hartford; "Physiology and Psychology of Crime," by Rev. Wm. Tucker, LL.D., of Ohio; "Hypnotism," by Morris Ellinger, Esq.; "Euthanasia in Articulo Mortis," by E. Payson Thwing, M.D.; "Testamentary Capacity in Mental Disease," by A. Wood Renton, Esq., of London; "Report of Committee on Execution by Electricity"; "Death by Electricity in Capital Cases," by Henry Guy Carleton, Esq.; "Circumstantial Evidence in Poisoning Cases," by John H. Wigmore, Esq.

NATIONALIZATION OF THE SOCIETY.

By far the most important of the labors of the Society during the past year has been that of assuming the national character and organization, which the history, labors and traditions of the Society entitled it to accept.

It had for many years represented the best American thought, upon Medical Jurisprudence in both professions; it was proper that it should be national and cease to be local in its labor. The organic law was amended.

Members from the various States and Territories, and other countries united, and at our recent election, vice-presidents of the body were elected from nearly every State and Territory in the Union, and from some foreign countries and colonies. To this movement so much of the time of the chair has been devoted that other interests have perhaps suffered for want of proper attention.

The accessions from other States and countries have been very large. It may seem invidious to name particular States, but the palm has been closely contested by the greatest of the Southern States in territory, Texas, and the smaller State of New Hampshire, the latter of which has thus far furnished most of our new membership in proportion to her area and population. For this result in New Hampshire, I desire thus publicly to express the thanks of the body to United States Senator W. E. Chandler, to whose valuable and efficient co-operation with the chair this result is largely due, and to Dr. T. R. Wallace, of Texas Insane Asylum, and Hon. Thomas Ochiltree for the great success in Texas.

To carry such a work into every State and Territory, reaching the more prominent members of the professions interested, is no small labor, but the coming year will doubtless double our labor of 1888 and make this Society one of the most commanding and prominent factors in the advancement of Forensic Medicine among civilized nations.

The great success that has attended our labors in this respect, is also largely due, and I take pleasure in thus acknowledging the very efficient aid of Senator Davis, of Minnesota; Senator Beck, of Kentucky; Governor Green, of New Jersey; ex-Governor Hoyt, of Pennsylvania; Judge Somerville, of Alabama; Judge Montgomery, of Washington, D. C.; Judge Normile, of Missouri;

Dr. T. R. Buckham, of Michigan ; Dr. Milo A. McLelland, of Illinois ; ex-Governor Watson C. Squire, of Washington Territory ; Judge Wm. H. Francis, of Dakota ; and that distinguished body of Superintendents and assistant physicians in the Hospitals for the Insane, more than thirty two of whom have united with the Society during the year that has just closed, and who have without exception lightened the labors of the chair in this regard.

Too high praise cannot be awarded to the splendid aid lent by the public press to the work of this body. The New York *Herald* has given it great attention. The New York *Tribune* has also given our work high endorsement and praise. The *Mail and Express* published the prize essay of Mr. Wigmore. The New York *World* published the paper of Mr. Carleton. The *World* and *Sun* have loaned us electrotypes, and the leading journals of this city have extended courtesies of great importance, and are entitled to our thanks. To the Medical and Law journals, home and foreign, are we greatly indebted for like favors, and it gives me pleasure to publicly return the thanks of this body to the press for its cordial aid.

THE PRIZE ESSAYS.

Through the generosity of that public-spirited member, Mr. Elliott F. Shepard, and the private contributions of a few of our more enterprising members, three prizes were offered—one of \$100, one of \$75 and one of \$50, for the first, second and third best essay on any subject within the domain of medical jurisprudence.

There were ten papers contributed in competition, and the prizes were awarded by a committee composed of Ex-Judge Noah Davis, Ex-Judge John F. Dillon, W.

G. Stevenson, M. D., Stephen Smith, M. D., and E. W. Chamberlain, Esq.

The first prize was awarded to John H. Wigmore, Esq., of Boston; the second to J. Hugo Grimm, Esq., of St. Louis, and the third to Edward M. Hyzer, Esq., of Janesville, Wis. Honorable mention was made of a second paper by Mr. Wigmore, one by Prof. Ed. Payson Thwing and one by the President of the Society. As it will be hardly possible to find space in the Journal for all these papers, I recommend that the larger part of them be published in book form, under the auspices of the Society, if sufficient encouragement is given by members towards providing the necessary funds without expense to the Society. The three prize essays and those receiving honorable mention could be published so as to sell to members at cost who subscribed, at the nominal sum of \$1.00, in cloth, and 50 cents in paper; and, if sufficient members order them, they will be published and will form a notable contribution to the forensic literature of our times, and add to the good work of the Society.

The success which has attended this effort has been such as to warrant its continuance, and I have the honor to announce that I will offer in my own name the first prize of \$100 for the best essay of the ensuing year, competition to close September 1, 1889; and I do not doubt that similar prizes for second and third best essays will be provided for same amounts, by subscription, which will be shortly sent to a few of the leading public-spirited members of the body.

PUBLICATIONS.

The Society during the year has published a volume on the "Medical Jurisprudence of Inebriety," embracing

the more notable papers germane to that topic read before it, with the discussion upon them. This volume has just been issued, and is offered to members at 50 cents cloth and 35 cents in paper.

It is a publication which reflects credit upon the Society, and is a valuable addition to the literature of our era on a topic now engrossing so large a share of public attention.

“Medico-Legal Papers, Series 4,” has progressed, and about one-half of the volume of 550 pages is completed. Subscriptions to this work, and to “Series 5,” which will follow it, come in constantly, which have been announced in the Journal.

It is only by these subscriptions—at \$3.50 cloth, and \$2.50 paper—that the body has been able to publish these valuable papers read before the Society prior to the commencement of the Journal, and the consequent preservation and addition of the same to the forensic literature of our era.

“Medico-Legal Papers, Series 1,” has for some time been out of print, the edition being wholly exhausted.

An effort is now being made to publish another edition of “Series 1,” embellished with portraits and illustrations, which will be done if those members who have not that series in hand care to subscribe. It can be furnished at \$3.00 in cloth and \$2.25 in paper, and if sufficient members order it, the publication will be commenced without expense to the Society beyond subscription to the usual number of copies for those societies and journals to whom it is under obligation to send copies of its publications.

The MEDICO-LEGAL JOURNAL has been, perhaps, the most important factor in carrying on the work of the body. Its circulation has increased and its exchanges

are now with the best journals of the kindred sciences in the world. By it the labors of the body and interest in the subjects discussed reach the students, workers and thinkers in forensic medicine in all lands.

The burden and labor of this publication has fallen on a few. The members of the Society have been furnished with it, at less than its actual cost. The moment the finances of the Society will permit, these conditions should be changed, and members of the Society who can, should aid the Journal in all ways in their power, by increasing its subscribers and sending it financial support.

THE LIBRARY.

The principal contributors to the Library during the past year have been our new and our foreign members. Some measures should be adopted to place the Library on a more firm foundation and to interest members in its success.

The extraordinary duties now imposed upon the Chair has prevented that personal attention hitherto given this important subject, and some one should volunteer to take up this neglected question, and bring the cause of the Library to the front. If every member would annually donate one volume, it would add notably to our already valuable collection.

PROGRESS OF THE SCIENCE.

There is steady growth in this country in medical jurisprudence.

The Medico-Legal Societies of Philadelphia and of Chicago are in a most flourishing condition.

The Medico-Legal Society of Massachusetts and of Rhode Island, composed of the Medical Examiners in those States, who supersede there the Coroner system,

are doing splendid work and awakening interest in medico-legal questions.

In some of the State Medical Societies medical jurisprudence is ignored, and in some it is cared for.

In the associations of the Bar it is almost wholly ignored.

In the medical colleges it is, in some cases, given attention, and in a few of the law schools, but it is a scandal upon both professions that their schools of law and of medicine give so little attention to those subjects now so exciting public attention, and which are entitled to professional recognition from every point of view.

LUNACY LEGISLATION.

The crying evils of our lunacy statutes, everywhere acknowledged, and to which attention has been called by the Governor of the State, is cause of regret and apprehension.

Various measures for relief have come before the legislature and the people. Several are now under consideration.

It is my deliberate conviction that no sound remedial legislation is attainable in the State of New York, except by or through a legislative commission, or a commission named by the Governor of the State. This has been previously urged upon the executive and legislature, by the Medico-Legal Society. We trust that the time is near at hand when a carefully selected commission will be named and charged with the duty of a thorough revision of the Lunacy Law of the State.

JUDICIAL EXECUTIONS BY ELECTRICITY.

The abolition of hanging as a death penalty has been for many years discussed in this body.

The "Diagnosis of Hanging," by Tardieu; "The Death Penalty," by Dr. Alonzo Calkins; a like paper by Prof. Packard of Philadelphia, and the recent papers by Dr. J. Mount Bleyer and Henry Guy Carleton, Esq., have been read before the Society at various times during the past fifteen years.

The committee appointed by the Governor made their report upon the subject, January 18, 1888, recommending the abolition of hanging, and the substitution of death by the electric current.

The select committee of this Society reported at the March meeting, favoring the course recommended by the State Commission, and their action was transmitted to the legislature soon after by this society.

The legislature passed an Act carrying out the leading features of the report, and the Governor signed the bill which, by its terms, went into operation January 1, 1889.

The Medico-Legal Society, on the recommendation of the Chair, named a committee to examine the whole subject, conduct experiments with the aid of competent electricians, and report for the benefit of the public authorities, the best method of carrying this law into effect.

This committee made a report in December, 1888, recommending the use of the alternating current, which had the endorsement of high electrical authority, was approved by the body, and the subject is now under discussion in scientific circles throughout the world.

THE INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE IN NEW YORK.

On the first Tuesday of June, 1889, there will be held in New York, an International Congress of Medical

Jurisprudence, to which all scientific bodies and scientists throughout the world are invited to be present, and contribute papers, in any language.

It will continue four days, and the delegates and strangers during the session will be the guests of the Members of the Medico-Legal Society. A large attendance is expected, and already many papers have been promised by eminent scientists, home and foreign. A volume of the transactions of this Congress will be published, to be furnished subscribers in paper cover, at \$1.50 each ; cloth, \$2.00.

The details will be settled by appropriate committees to be hereafter announced.

A Committee on the Legal Requirements of Autopsies is nearly ready to report.

The Committee on Hypnotism is conducting its experimental work.

Committees on Re-Organization of the Morgue ; on Criminal Responsibility of Deaf Mutes ; on National and State Chemists, and on the "Comstock Seizures" have not concluded their labors.

The Committee on Legislation Regarding the Insane, will be continued for work during the coming year, as to uniformity in laws of the various States, and the newly re-organized committees will be announced hereafter.

GREAT BRITAIN.

There has been no especial advance made in Forensic Medicine during the past year, nor has any National Society been organized in the British Isles. The amendments to the Lunacy Laws are still pending before the English Parliament.

FRANCE.

The Medico-Legal Society of France carries forward its work with vigor and ability.

The French Journals are as able and influential as in previous years.

GERMANY AND AUSTRIA.

While there is no Society of Medical Jurisprudence in any of the German speaking countries, the science receives considerable attention from the Societies of Psychiatry at Berlin, and at Vienna. The *Quarterly Journal of Medical Jurisprudence* in Berlin, and *Fredicks Blaater of Legal Medicine* at Nuremburg, maintain their high standard of excellence. Nearly all the allied sciences, and that of law are ably maintained by a great body of able Journals in Austria, Bavaria, Germany and all the German speaking cities and counties.

ITALY

has no Medico-Legal Society, but it has a large body of workers in the science, and the ablest array of Journals of any country.

La Revista Sperimentale di Medicin Legali is a standard Journal of the Science, and the Legal, Social Medical and Scientific Journals of Italy are second to none in the world.

BELGIUM AND HOLLAND.

The Society of Mentale Medicine of Belgium and the Netherland Society of Psychiatry represent the leading work in that branch of medical jurisprudence relating to mental medicine. A movement is on foot in Belgium to organize both professions into work upon medical jurisprudence in a Medico-Legal Society which has the favor of medical men there. If the Belgian Bar meets

this in the proper spirit it will produce early and good fruit for the progress of the cause.

RUSSIA AND SCANDINAVIA.

The Society of Psychiatry of St. Petersburg, under the able presidency of Prof. Mierzejewsky, and the leading Russian and Scandinavian journals, keep pace with the advance of scientific progress in forensic medicine in these countries, which have no journal especially adapted to medical jurisprudence except the new one recently started at St. Petersburg, which has not been received by us. The journals conducted by Prof. Mierzejewsky and Prof. Kowalewsky maintain their high standing.

SPAIN AND PORTUGAL

have both made progress. A new journal devoted to medical jurisprudence has been commenced at Madrid, under the leadership of a prominent lawyer, Signor A. M. Alvarez Taladriz, which gives promise of good work, while in Portugal a successful journal is conducted by Dr. Bettencourt Rodrigues, which is received in exchange for our publications.

CENTRAL AND SOUTH AMERICA.

No societies are yet formed in the Central or South American countries of the two professions of law and medicine, but able journals are published in Cuba and elsewhere, mainly on medical topics. Quite a number of eminent men in these countries take an interest in our labors, and we are extending our membership into these fields.

THE WORK OF THE COMING YEAR.

The principal effort should be to carry forward with energy the work of nationalization of the body, and se-

cure members in every State and Territory, and in each foreign country and colony, who will be in relation with this body and represent the work in every locality, increasing our membership to at least 1,000 members to co-operate in the movements now going forward to bring the lunacy laws and other laws of the various States into some general system of harmonious working.

To complete the labors of the various committees of the body.

To devise best plans by which the members in the various States and countries can bring questions arising in their locality to the attention and action of the body, and to develop and increase the public interest in forensic medicine.

I renew the recommendations made by me last year as to the importance of State and National chemists, under the pay of the State or the government, to be at the service of accused persons or the government in criminal trials.

I strongly urge the re-organization of the Morgue upon a basis that shall place its administration in charge of the most eminent toxicologists and scientists in the city, with a well-equipped medical staff; I recommend that this body, through an appropriate committee, urge upon the medical schools and colleges the urgent need of chairs of medical jurisprudence as a feature of medical education, and upon the State Medical Associations the organization of a separate section upon forensic medicine. Upon the higher universities the great importance of this science, and to the National and State Bar Associations of the Union the establishment of standing committees on that much neglected but essential branch of a complete legal education, "Medical Jurisprudence." I congratulate the Society upon the wonderful growth and

prosperity of the past year, and hope that we may all enter with renewed zeal and energy upon the labors of another, determined to outstrip the work of the year just closed.

DEATH-CURRENT EXPERIMENTS AT THE EDISON LABORATORY.

By HAROLD P. BROWN.

The law requiring condemned criminals to be executed by electricity goes into effect on January 1, 1889, and at the request of Prof. R. Ogden Doremus and others of the committee of the Medico-Legal Society appointed to determine the best means of putting the law into effect, it was determined to experiment with animals of equal or greater weight than a man. The only objection that has been raised to the experiments made upon dogs last summer was that the heaviest weighed but ninety pounds, and it was assumed that much more or higher E. M. F. would be required to make death certain and instantaneous to a human being. I therefore invited the committee and Mr. Elbridge T. Gerry, author of the electrical execution law, to witness tests to determine whether or not this objection was well founded. These tests took place on Dec. 5, at Mr. Edison's laboratory, at Orange, N. J.

The first animal was a calf, weighing $124\frac{1}{2}$ pounds. A sponge-covered disc two inches in diameter was applied to the forehead between the eyes, the hair being first clipped. The second electrode was made of wire netting four inches long and two inches wide, also sponge covered, applied at the left of the spine, back of the shoulders. The sponges were saturated with a solution of zinc sulphate, having a density of 1.054 at 60 degrees Fahrenheit. The resistance between the electrodes was found to be 3,200 ohms. A Siemens alternating current dynamo was used, its field being charged from an ordinary direct current dynamo, and its E. M. F. was regulated by variable resistance in the field circuit.

In the first experiment the main current was passed through the low resistance coil of a large converter made by an electric lighting company, and the calf

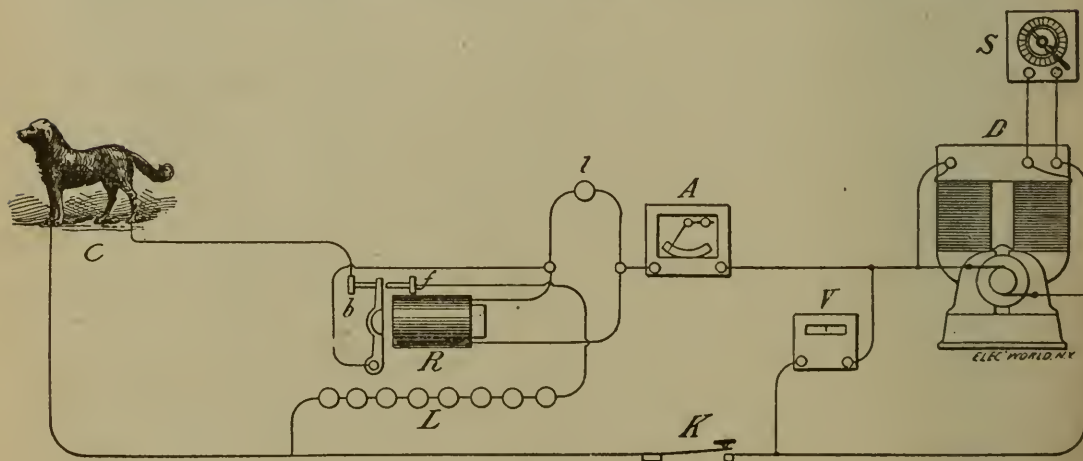


FIG. 2.

placed in circuit with the high resistance coil for 30 seconds at 3:50 P. M. Before closing circuit on the subject the Cardew voltmeter showed 1,100 volts E. M. F. in the secondary, but as soon as closed the potential at once fell to 100 volts, and remained stationary. The animal dropped, but was uninjured, and rose to its feet nine minutes later.

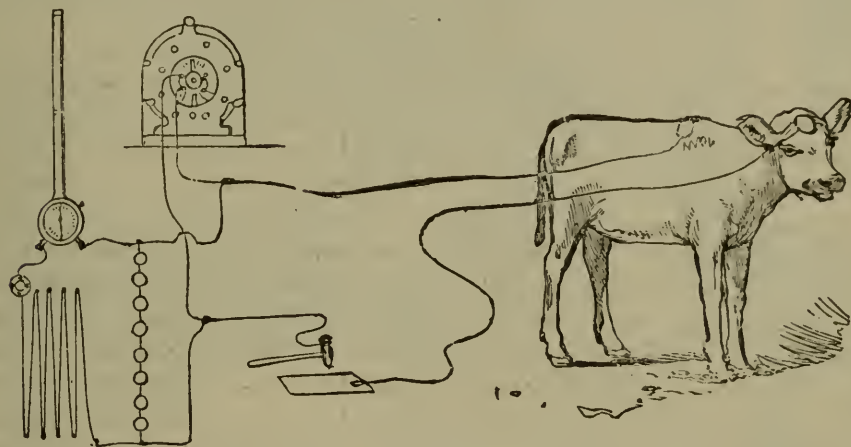


FIGURE 3.—METHOD OF CONNECTING DYNAMO AND SUBJECT.

The converter was then disconnected and the main current at 770 volts E. M. F. was applied for eight seconds at 3:59 P. M. Death was instantaneous. The animal was at once dissected by Drs. Peterson, Ingram and Bleyer. In the brain the vessels were found filled with blood, but there was no hemorrhage. The brain remained very warm, even after being exposed for ten minutes to the air and immersed in cold water. The heart and lungs were found to be perfectly normal. The hair on the forehead projecting beyond the sponge touched the metal plate and was scorched, but the skin was uninjured.

The second calf weighed 145 pounds and had a resistance of 1,300 ohms between the electrodes, which were applied as before, the metal of the disc being further protected by wrapping with cotton waste. At 4:26 P. M. the alternating current at 750 volts E. M. F. was applied for five seconds. Death was instantaneous, the heart stopping at once, but reflex movements upon excitation were observed for one and a half minutes. The calves were pronounced by the butcher to be in good condition before the experiments, and their meat was certified to be fit for food.

To settle the question as to weight, I used as the next subject a horse weighing 1,230 pounds, with halter. His hip had been dislocated, but otherwise he was in good health and condition. Connections were made by wrapping cotton waste saturated in water around each foreleg, and holding that in place with bare copper wires. (See figure 4.) This was suggested by Mr. Edison's plan of execution by electricity, in which the criminal was to be held in metal wristlets for electrodes. It was suggested by the physicians present that with this connection the current

would pass through the horse's chest muscles and not reach the spinal nerves or the heart. This proved to be the case, and the contact of the wires on the cotton waste was insufficient. The resistance was 11,000 ohms.

It was attempted to pass an alternating current of 1,200 volts E. M. F. through the animal for the fraction of a second by closing circuit with a rapid blow of a hammer on a metal plate. But in preparing for the experiment the Cardew voltmeter was disabled; a series of lamps was then substituted and the E. M. F. calculated from their number and brilliancy. The current from the dynamo was passed through the converter above mentioned, but with unsatisfactory results in obtaining the desired E. M. F. in the secondary circuit. A large ring converter was tried with no better results; the small ring converter used by me in the dog experiments was then substituted, and the dynamo field-circuit resistance adjusted, until a series of eighteen lamps of the Edison type were brought up to redness in the secondary circuit.

At 5:20 P. M. the current was applied by a single tap of the hammer, but the animal was uninjured. The converter, which was deemed of insufficient capacity for the purpose, was then abandoned, and the dynamo current used. A series of seven lamps was connected to the main wires and brought up to bright redness. At 5:25 P. M. contact with the horse was made for five seconds without serious effect. At 5:27 the same current was applied for fifteen seconds, but with no apparent injury. A series of seven lamps was then brought up to candle-power, indicating 700 volts, and the current applied for twenty-five seconds at 5:28 P. M., during which the water steamed from the cotton waste, showing insufficient metal contact. The result was fatal. In this, as well as in the other cases, death was instantaneous and painless.

These experiments demonstrated beyond question that the alternating current is the best adapted for electrical executions, and, after witnessing its life-destroying qualities, the committee were not a little startled when I told of the results of recent tests for leakage made by me not long since on the circuit of one of the alternating current stations in this city. I grounded one terminal of a Cardew voltmeter in whose circuit was six times its resistance in platinum wire; the other end I touched to one of the primary wires of the circuit. A deflection of 95 degrees with this resistance in circuit would indicate 700 volts; but, to my astonishment, when contact was made the needle turned to 360 degrees, when the protecting fuse burned out.

In the last experiments I determined that I would leave no opportunity for some to say that the subjects were "in a dying condition," and so had them carefully examined by the physicians present, and the horse photographed. Those who witnessed the experiments were Mr. Thos. A. Edison, through whose kindness I was allowed the use of apparatus; Mr. Elbridge T. Gerry, Prof. R. Ogden Doremus, Prof. Chas. A. Doremus, Dr. Frederick Peterson, Dr. Frank H. Ingram, Dr. J. M. Bleyer, Mr. Galvin, M. Bourgonon, Mr. John Murray Mitchell and Mr. A. E. Kennelly, who kindly took charge of the measurements.



DEATH BY ELECTRICITY IN CAPITAL CASES.

BY HENRY GUY CARLETON, ESQ.*

Mr. President and Gentlemen of the Medico-Legal Society:

The exhaustive report of Messrs. Elbridge T. Gerry, Alfred P. Southwick and Matthew Hale, Commissioners, made to the Legislature of this State, and the most learned report of your own committee, made at the last meeting of this society, leave but little to be said upon the subject of carrying into effect the sentence of death in capital cases by means of electricity, as now contemplated by the law.

The advisability of inflicting death instantaneously by a silent and invisible current, instead of by the counterweight, or trap and rope, is too apparent to need discussion.

The injury done to the community by the frequent bunglings of inexperienced executioners, by the concurrence of morbid sightseers often admitted to the horrible scene, and by the sensational reports of the condemned man's last moments, last words and struggles, has already been ably shown.

The lowering of the dignity of the law, by carrying out its sentence in a manner calculated to shock the beholders, has been justly considered.

Experience has shown that capital punishment is a necessity of justice, but civilization demands that its in-

* Read before the Medico-Legal Society December Meeting, 1888.

fliction shall be stripped of barbarity, and that through it no harm come to the community, and these points also have been carefully weighed by the State Commission and by your committee.

It only remains, therefore, for me to offer you my opinion as to the form of apparatus to be used.

There can be no difference of opinion upon the question that an alternating current of 3,000 volts, transmitted from a dynamo, is capable of producing instant death if properly applied to a human being.

By conductors suitably insulated, this current may be safely and surely brought to the place of execution, and by means of the double-pole switch, familiar to every telegraph engineer, may be turned on or off with entire safety to the operator.

By a shunt and galvanometer, so easily constructed as not to need description, and operated by the double-pole switch aforesaid, the operator of the death apparatus may see that the current is on the wires before turning the switch.

Now, as to the proper place to apply this current, and the simplest form of apparatus to use.

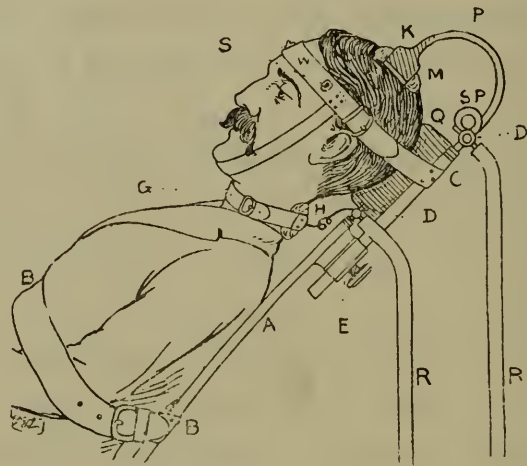
To transmit the current through the arms might produce death, but would also cause excessive muscular contraction which would last long after life was extinct, and which might even be so great as to disarrange the apparatus.

To transmit the current through the arms and thence through the trunk and legs, is open to still greater objection on the same grounds.

To apply one pole to the apex of the heart and the other to the neck where it would reach and affect the phrenic nerve, would result in instant arrest of circulation and respiration, and hence death ; but it would be necessary

to partially strip the condemned man to accomplish this, and even then the apparatus would be difficult to adjust, and as executioners are neither electricians nor anatomists, mistakes could easily be made.

To paralyze the brain is to immediately arrest all functions of the body, annihilate consciousness and sensation and produce death. The less resistance offered to an electric current the greater its energy. The smaller the compass of the organ to which the apparatus is to be applied, the simpler the mechanical forms required. Consideration of these facts lead me to a conviction that the application of the electric current for this purpose should only be made to the condemned man's head.



I submit herewith an outline sketch of an apparatus which I have devised for the execution of criminals by electricity, and which embodies my ideas. Its parts are as follows :

1. A stout chair, A.A., of wood, with its back inclined as shown, securely fastened to the floor by suitable bolts.
2. Two stout leather bands riveted to the chair, as shown, and capable of rapid tightening by means of their buckles.
3. A curved metal rod, preferably of copper, K

pressed forward and downward with moderate force by the spiral spring at the pivot SP, and terminating in a slightly concave metal knob M, covered with felt, saturated with a strong solution of sulphate of zinc.

4. A rubber or leather collar, G, fastened by a buckle, as shown, and bearing a metal plate, H, also covered with felt saturated with a strong solution of sulphate of zinc, said plate being adjusted to the nape of the neck, over or just below the *medulla oblongata*, and bearing a foot or more of stout wire.

5. Two binding-posts, D, D, and two tubes of hard rubber, or other insulating material, R, R, conducting the wire beneath the floor to the double-pole switch, which can be located wherever desirable.

6. The head-strap, W, of leather, bearing three hooks, S, S, S, to which may be attached the cloth for veiling the face, and a padded head-cushion.

The angle of the back of the death-chair will give partial support to the body when it relaxes after death.

The two binding-posts are well insulated from the chair by hard rubber, as shown.

I should recommend that the pole P, the knob K, except its lower extremity, and the binding screw heads and trunks be encased in hard rubber as an additional precaution, although before the double-pole switch is turned no current can be on either conductor.

The adjustment of this apparatus should be very simple and rapid. The collar G is placed about his neck in the cell while he is being pinioned. When he is seated in the chair the executioner first adjusts the head-strap, then secures the wire H running from the collar to the binding-post D, then hangs the face-cloth to the hooks S, S, S. By this time his assistant has fastened the buckles of the straps BB. The pole P is then thrown

forward, the spring SP keeping it pressed against the skull. This operation, from the time the criminal seats himself until the switch is turned, should not exceed fifteen seconds.

It might be urged that the hair would prove an obstacle to the current from the pole P. It must be remembered that all felons are cropped on entering a penitentiary, and that the wet felt will insure the transmission of the current.

By proper guarding of the switch no possible danger can be incurred by the operator or his assistants while adjusting the condemned, and after the current has been turned off the apparatus is again rendered harmless.

*INSANITY AS A DEFENCE TO THE CHARGE OF CRIME.**

BY J. HUGO GRIMM, ESQ., OF ST. LOUIS, MO.

One of the most distinguished of American Judges, in delivering an opinion in a well known case, remarked that “of all medico-legal questions, those connected with insanity are the most difficult and perplexing;” and with this statement all who have ever considered the subject of insanity in its legal relations will fully agree. It was not, however, on account of its character in this respect that I selected my subject, but rather on account of the interest I feel all thoughtful people have in the subject, and of its great importance to the community at large.

There are several reasons which contribute to the great doubt, which, notwithstanding the careful and painstaking study which it has received for more than a century by both the medical and the legal profession, still envelopes this subject. There are doubts and uncertainties not only as to the nature of the disease itself, but also as to its true relation to the law,—the fact of its existence being satisfactorily established.

And first, the subject presents to the medical world a field still to a great extent unexplored. The line between sanity and insanity is so shadowy and ill-defined that there are to be found many cases, indeed, in which experts are not agreed as to whether they fall on the dark or on the light side of the line. Again, it is clear from

* Read before the Medico-Legal Society, February 13, 1889. This essay won the second prize in the competition, awarded by the committee of the Medico-Legal Society.

the variety of definitions of this malady to be found in the writings of those who have made it a study, that different medical experts form different conceptions of its nature and causes.

That insanity is manifested by abnormal conduct, resulting from abnormal action of the mind, is probably admitted on all hands ; but as to what it is that produces this abnormal action of the mind there is some diversity of opinion. It seems that some experts, still holding to the philosophy which sees in man a duality—a union of matter and spirit—admit that the disease may have its seat in the spiritual essence, or that the abnormal action of the mind may be due to a disturbed relationship between these two constituent factors. Others, and I might say the great majority of the medical profession, clinging to the materialistic philosophy, scout such ideas as these, and insist that physical disease is the basis of insanity. This materialistic view, to which there can be no objection from a purely legal standpoint, has resulted in two different classes of definitions of insanity, the one based on the deranged function, the other on the physical disease producing the disturbed function. These definitions, we see, are the result of the different aspects in which the same thing is viewed ; in the one the conduct is kept in view while physical disease is admitted as causing it, while in the other the disease is the fact before the mind while abnormal conduct is recognized as its effect. It is natural that the doctor will prefer the latter class of definitions, and just as natural that the lawyer will prefer the former, for it is disease that the doctor is looking after, and it is conduct which primarily engages the lawyer.

While, as was said, the majority of the medical profession agree that physical disease is the cause of abnor-

mal mental function (whether they call the disturbed action of the mind "insanity," or whether they designate the disease itself by that term), the exact nature of this disease, or its location in the human body, have not been determined. Many find the physical cause in a diseased brain, others hold that the disease may be located in any portion of the nervous system even outside of what is commonly understood by the brain. Others find the cause of insanity in the blood. In the "American Journal of Insanity" for April, 1859, I read:—"Insanity, in a purely medical sense, is a hypothetical form of bodily disease. To this term are referred only those cases in which mental derangement exists, and in which no organic basis or other proximate cause can be determined." "Thus, softening of brain, sunstroke, fracture of skull, fevers and alcoholic and other poisoning are not insanity, though more or less connected with derangement of mind." This quotation while it does not justify any such inference as that the basis of insanity is not physical, does show that at the time the article from which I quote was written the nature and location in the human body of the disease lying at the root of insanity had not by any means been determined. And as to these two questions it does not seem that more recent investigations have thrown much light upon them.

Now, then, without looking further for the physical cause of insanity, for this can be of little consequence in the present discussion, let us ask how its presence is shown. The answer is, "By abnormal conduct, for conduct, including language, of course, is the only manifestation of the action of the mind." Insanity, then, is shown by abnormal conduct. What conduct is to be characterized as abnormal is, of course, a rather delicate

question, and I presume no one has been rash enough to venture a definition of insanity based on a person's actions and conduct merely. Each case must be judged for itself; conduct which would be decidedly abnormal in one, would be just as decidedly natural in a different person.

The great and almost insuperable difficulties inhering in this question of insanity, have been fully appreciated, and many eminent scholars have denied that the term could be defined. As a form of disease it is quite likely that any definition of it would be unsatisfactory, nor, I presume, is it necessary as far as the medical profession is concerned to have a definition of the term. When we come to the law, however, and speak of insanity as being a defence to crime, we must have a clearly defined notion of what is meant by the term,—it then becomes a legal term, and like every other legal term, must have an exact, call it technical if you will, meaning. The law determines what acts are forbidden, and also determines what shall be an excuse for the commission of a forbidden act. Now, the terms expressing these forbidden acts (crimes) as well as those expressing the conceptions of what constitute defences must have a precise, certain, and exact meaning. Therefore, if “insanity” is to be allowed as a defence to crime, that term must express a clear idea, and that idea or conception can only be made clear by defining the term which expresses it. Hence the absolute necessity of a definition of insanity by the law, if insanity is to be used as expressing a defence. It is, therefore, necessary that the law either define what it understands as insanity which will excuse from the consequences of the violation of an act forbidden by law, or reject the term entirely, as having no legal meaning. From what has gone before it will be clear

that if insanity is to be allowed as a defence, it must be on the ground that it relieves from responsibility to the law, and what will relieve from such responsibility must be determined by the law itself ; therefore, if this defence be allowed, the law must determine what it understands by that term. When we speak of insanity as being a defence to crime, we do not mean that insanity, as understood by our medical friends, is a good plea to a criminal charge, but that there are certain mental states of persons which the law recognizes as relieving from responsibility, and which mental states are for convenience designated by the term insanity. "Insanity" thus used is a legal term, having a technical meaning. Or to use the words of a writer in high standing,—

"For judicial purposes, insanity is merely a term to cover a certain class of exceptions from the current presumption as to persons of a certain age, who are, other circumstances being favorable, competent to foresee the consequences of their acts."

Insanity thus used as a legal term has a very different meaning from that given to the word by the medical profession, and this should not be lost sight of.

I call attention to these facts for the reason that insanity has at times been defined by different Courts, and that these definitions have been severely criticised, especially by medical experts, and I might add with Mr. Bishop, probably because these medical critics failed to a great extent to understand the judges whom they so severely criticised.

It should always be remembered that when insanity is spoken of in the law, it is not a disease which is meant, but a certain mental condition recognized by law as relieving from responsibility,—the character of the evidence to be admitted in proof of which is also necessarily determined by the law itself.

In order to comprehend what is meant when it is

stated that insanity is a legal defence to a charge of crime, it will be necessary to examine briefly into what constitutes crime, its definition and essential elements, and into what the law requires to render responsible, and into what it admits as removing responsibility.

A crime has been defined as ;—

“ An act committed or omitted in violation of a public law either forbidding or commanding it.” 4 Blacks., Comm. 5.

It is an act of disobedience to a law, forbidden under pain of punishment, the penalty being inflicted by the law-making power specifically as punishment.

Every person committing an act forbidden by the public law is *prima facie* guilty of crime, and in the absence of proof of facts which are sufficient in law to excuse the act—that is, such as destroy one or the other of the elements comprehended in the legal conception of crime—he is responsible. What these elements are, and their philosophical basis, we shall now consider.

Human laws are enacted for the government and protection of moral beings; only moral beings are subject to human laws, and they only are responsible for the infraction of these laws. Reason and freedom of will—that is, the power to determine one's own actions—are, I take it, the essentials to moral accountability. And these two factors are necessary to accountability to the law. While the same elements are the basis of both moral and legal responsibility, the conceptions of these two classes of responsibility are yet not the same, and the cause of the difference is to be found in the different presumptions which the law indulges on grounds of expedience or of necessity, which presumptions are in many cases natural, being based on the result of experience and observation, and in the other cases necessary to any administration of law.

These elements of responsibility, as understood in the law, have received technical legal names, and are,—

(*a*) Criminal intent, and (*b*) free will.

Let us now consider these elements of legal responsibility, for whatever defence to a crime is permitted at law must be allowed, because it destroys one or the other or both of these elements. Insanity to be a defence must, therefore, destroy either or both of these elements, and we can now clearly see the distinction between insanity as viewed by alienists and the legal term “insanity.” One may be unquestionably insane in a medical point of view and still responsible to the law, since neither of the legal elements of crime are destroyed, and, therefore, not insane in the legal sense of that term.

What now is the meaning of “criminal intent?”

It is absolutely necessary that we come to a clear understanding as to the signification of this phrase, for in the absence of criminal intent there can be no crime.

By a criminal intent I understand this: it is nothing more than a consciousness on the part of the wrongdoer that the act he is about to commit is forbidden by public law.

We have said that inasmuch as human laws are enacted for the government of moral beings, responsibility to these laws is based upon the same notions as is moral responsibility; also that the essentials to moral responsibility are knowledge of the wrongful character of the act in question and power to refrain from doing it. Criminal intent, then, is this element of knowledge that the act was wrongful. It is this moral element modified somewhat by necessary rules and presumptions of law. The basis of responsibility is the knowledge that the act is wrong. Now, here appears a dis-

inction between law and morals. While there may be some doubt as to whether an act is morally right or wrong, since this is to be determined by each individual in accordance with the standard of right and wrong which he has formed for himself, there can be no doubt as to what is legally right and wrong since that is determined definitely by an authority acknowledged to have the power to determine it. Now, while in the absence of a positive announcement as to the character of an act as right or wrong, one might excuse his commission of the act on the ground that he did not know it was wrong; that, according to his individual notions of right and wrong (which would be of moral right and wrong), the act was right and proper, still, where the wrongful character of the act is made known to him, he is not excused for doing it, but is even morally responsible. Even in the case where he thought that the act was not in itself wrongful, still, where he knew that the proper authority had decided or declared it to be such, he would be responsible. Now, when the law forbids an act, that act is *ipso facto* a wrongful one, and whoever does it, knowing it to be wrongful (declared so), is morally guilty. Here, then, is the moral element in legal responsibility. This consciousness that the act contemplated is forbidden by the public law is, then, what is really meant by "criminal intent." But here appears a further distinction between the pure moral element of knowledge of the wrongful character of the act, and the modification of that element designated "criminal intent;" for, while to moral responsibility pure and simple, actual knowledge that the act is wrongful is necessary (actual consciousness of the character of the act is necessary), yet, to make out a criminal intent, actual knowledge that the act is forbidden by law is not at all necessary, nor need

it be shown. He is considered as being conscious that the act is forbidden, and though, as a matter of fact, he did not have this consciousness, he will not be permitted to prove this fact. It is his duty to know what is allowed and what is forbidden by law, and though there are facts which in morals would excuse want of knowledge as to character of an act, these will not be accepted in the law. Where one neglects a duty—as in this case to inform himself as to what is wrong—he is morally responsible. We thus see that the moral element of responsibility is never lost sight of in holding one responsible to the law, although this element is brought within narrower bounds. And this leads us directly to a consideration of several presumptions of law, the existence and necessity of which were adverted to before.

And first the law presumes that every person within its dominion knows the law—knows what it commands and forbids. It needs no argument to prove that this presumption is one which must be made. It is a conclusive presumption of law, and no evidence should be admitted to rebut it.

Another presumption indulged by the law, and which is a natural presumption, is that every person knows the nature and natural consequences of his acts. Now this presumption may be rebutted, for to permit its denial would not make the administration of law utterly impossible, as would the admission of proof of ignorance of the law.

When, then, it is shown that one has committed an act forbidden by public law, that he knew it was thus forbidden—and the rule of the law will not permit him to deny that he did—and that he knew the natural (not legal) consequences of his act, criminal intent is shown,—the moral element is present.

From this analysis of the notion of criminal intent it will appear that legal responsibility attaches in many cases where there is an entire absence of moral responsibility. Thus, unless the person actually knew that the act was forbidden he is not morally responsible; but he certainly is responsible to the law, even though he did not actually know that he was doing what was forbidden, and therefore wrong. For it is his duty to know what the law commands and forbids, and his failure to inform himself on this point is of itself a wrong—a breach of his duty as a citizen. The moral element in crime, (this criminal intent) is entirely independent of all consideration of the wrong-doer's notions of the character of the act as gauged by his own standard of right and wrong,—of actual knowledge that the wrong done was a violation of the public law,—and of course independent of any considerations of his motive in doing the act.

Any defence to crime which is based on the theory that criminal intent is absent, must prove such facts as the law considers sufficient to disprove, not the presumption of knowledge of the law, for that is conclusive, but the presumption that every person knows the natural consequences of his acts. What proof will be sufficient in character to rebut this presumption is determined by the law.

Having now considered the element of criminal intent rather fully, it remains to advert to the other element of crime, the existence of a free will. This, like the element of criminal intent, is based on sound notions of moral guilt. For no one is morally responsible for an act which he did not do of his own free will. Nor is any one responsible to the law for an act he could not help doing. But as in the case of criminal intent the law presumes that every person knows the natural con-

sequences of his act, and also determines what state of facts, if proved, will destroy this presumption, so in the case of free will, the law presumes that every person has a free will, (the power to determine his own actions), and also determines what state of facts, if shown to exist, will be considered as rebutting this presumption.

If my views thus far expressed are assented to, and I hope they will be by many, although I do not doubt many will not share them, then the conclusion must follow, that any defence to crime, no matter what it be, must be based on a denial of either the presumption that the person committing the crime knew the natural consequences of his act, or a denial of the presumption that he was a free moral agent, in other words, that he did the act of his own free will. A consideration of the different defences allowed will, I think, show that they are all based on a denial of one or the other of these presumptions. And a consideration of these defences will lead us directly to the principal topic of this essay, for, in my opinion, insanity, where it has been allowed, was on the ground that it destroyed one or the other of these presumptions, and where it has not been allowed, it was refused because its character or degree was not such as the law could allow as disproving either of these presumptions.

Let us now briefly consider the various defences allowed by law, where the commission of the act is admitted, but its criminal character denied.

Ignorance or mistake of fact. The law allows as a defence to a charge of crime, proof that the act was done under a mistake of fact, in all cases where the act would not have been unlawful had the fact really existed as it was supposed to exist; likewise where one does an act in ignorance of a fact, where the criminal character of

the act depends upon the existence of the fact which is unknown—except in such cases in which the law specifically prescribes the knowledge of the fact as a duty.

Here there is no intent to do an act which is forbidden, but an intent to do an act allowed by law. Here there is no moral responsibility, because the act intended to be done was not declared to be a crime. The person, on account of his mistake or ignorance of some fact, could not foresee the natural consequences of his act. Such a state of facts are allowed as destroying the presumption that the actor could foresee the natural consequences of the act done.

Infancy. Where it is shown that the act was committed by one under the age of seven years, the offender is excused, on the ground, it is said, that an infant within that age is conclusively presumed to be incapable of entertaining a criminal intent. It is sometimes stated that this presumption is based upon the notion that one of such tender years has not the capacity to know what is forbidden and what not. I submit that it would be much more logical and consistent with legal principles to base this presumption on the ground that the infant has not the capacity to know the natural consequences of his acts. The important fact, of course, is, that the law indulges this presumption of incapacity, and it makes no great practical difference whether it is indulged for one reason or the other. But if the presumption is to be accounted for by one of the two reasons, the one consistent with established principles, and the other inconsistent therewith, it is better to adopt the former reason. I submit that the presumption of law that all persons know what is forbidden is a conclusive presumption, admitting of no exception, and irrebutable. The presumption that every person knows the natural

consequences of his acts, on the other hand, is a presumption of fact which may be disproved. Now, in the law, it is considered that proof that the offender is within the age of seven years, is proof sufficient to show that he did not have capacity to entertain a criminal intent.

Reason surely favors the view that this presumption is based on the infant's incapacity to understand the natural consequences of his act.

Intoxication is also allowed as a defence, if such a degree of intoxication is shown as would deprive the defendant of the power to know the natural consequences of his act.

The defences thus far considered are allowed on the ground that they destroy the element of criminal intent. Before taking up the question of insanity as a defence, it will be well to touch upon the state of facts admitted in law as destroying the other essential of crime,—the existence of capacity in the accused to determine his own acts.

Free Will. As we have seen, the law presumes that all persons have the power to determine their own actions, and that when one does an act he does it freely. As rebutting this presumption, the law allows proof showing that the act was done under compulsion or necessity ; but a mere subjective state of feeling, sentiment, passion, or the like, is not compulsion or necessity, such as the law recognizes. To be admitted as a plea in law the compulsion (also termed duress) must act on the accused from without ; the act must not have been determined by himself, but must have been the consequence of some power or force without him, and over which he had no control, which, in fact, caused the act, his will having been overcome by it, and he acting as a mere medium. In law, strong motives, the passions

and desires are not considered as sufficient to destroy volition, in truth these are the very things which the law is to restrain. Nor is disease considered as sufficient to destroy the will. To allow proof of disease as a defence, on the ground that it destroys the control of the will, would be extremely dangerous, and could only be admitted if it were established that a certain disease, or certain diseases were accompanied by a loss of control over the will. Proof of these forms of disease would then be admissible as defence.

We are now in a position to direct our attention to the question of insanity regarded as a defence to a charge of crime.

From what has preceded, we see that the defence of insanity is to be allowed, not because the accused was of unsound mind merely, but because there was such a degree of insanity as to disprove the existence of one or the other or both the elements of crime. In the words of Baron Alderson: "It is not because a man is insane that he is unpunishable;" "and," he proceeds, "I must say that upon this point there exists a very grievous delusion in the minds of the medical men. The only insanity which excuses a man for his acts, is that species of delusion which conduced to and drove him to the act alleged against him." To be more explicit, the insanity must be of such a character, or degree, as will negative the presumption that the wrongdoer knew the natural consequences of his act, or the other presumption, namely, that the wrongful act was the result of his own free will. If the insanity was of such a degree it is insanity in the law, and as such is a defence to crime, but if it be not of a degree which is deemed sufficient to negative one or the other of these presumptions, it is not insanity in the law, and the fact that the mind of

the criminal was weak or unsound is no defence. What conditions of mind, or what degrees of insanity are allowed as destroying either of these presumptions, or in other words, are allowed as defences to the charge of crime, we shall now proceed to consider.

At the very threshold of this discussion I wish particularly to call attention to two facts, which must not be lost sight of. And first, that it is the existence in the accused of a certain mental state that excuses from crime, and—second, that the law determines what ultimate facts shall be allowed to be proved as showing such mental condition, as well as the competency and relevancy of the evidence adduced in proof thereof, although the existence or non-existence of these facts is to be decided by the jury in each case.

This necessary mental condition is such a mental state as negatives the existence of a “criminal intent,” (the meaning of which term has already been explained), or of free will, the nature of which also has been adverted to.

Among the various facts admitted as proof of such a mental state as shows absence of criminal intent are certain forms and degrees of insanity. Let us now inquire into what these forms and degrees of insanity are.

(1) *Total Insanity.* This term is intended to include all cases where the intellectual faculties are entirely deranged. There are several forms of this degree recognized in the medical profession, but for our purpose the classifications of this disease by the doctors are of little assistance. What is meant by total insanity is merely such a degree of mental derangement or mental weakness as prevents the sufferer from comprehending his relation to other beings or things. The term is used in contradistinction to the term “partial insanity”

which is intended to cover cases in which the person is apparently insane only as to one or more subjects, and seems to be otherwise sane.

Now, where this total insanity is of such a degree as to show that the person had not the power to know the natural consequences of his acts, he is not responsible in the law. Some forms of total insanity so clearly incapacitate the sufferer from knowing the consequences of his acts, as for instance, mania, that the proof of his being afflicted with this form of insanity is sufficient to excuse him, but it is to be remembered that he is excused not because he is afflicted with this or that particular form of insanity, but because the fact that he is so afflicted, proves that he had not the capacity to know the consequences of his act.

The rule, then, is, that where one suffered under such a form or degree of insanity as prevented him from knowing the natural consequences of his act he is undoubtedly irresponsible.

This rule has been differently expressed, thus:

“To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that he was doing what was wrong.”

This quotation is taken from the answers of fifteen judges, in 1843, in response to the interrogatories propounded by the House of Lords, of England, relating to the defence of insanity.

The language of this rule is not clear, and has been subject to considerable, and, I think, just criticism. The expression “nature and quality of the act” here used is somewhat vague. I should say it meant no more than that the accused did not know the natural consequences of the act in question. The concluding part of the

answer, that is, "or if he did know it, that he did not know that he was doing wrong," is not, with all respect to the learned judges, sound law. I submit that the mere lack of knowledge of the wrongful character of the act, whether we take it to mean wrongful as against morals or as against law, is not in itself an excuse for crime. In the first place if by wrong is understood moral wrong, the objection is that the law does not concern itself with moral wrongs; that it could not if it would, since there are as many standards of moral wrong as there are persons, and that what to the majority of people would be a most immoral act, might be perfectly proper according to the peculiar standard of the accused. An act which in itself may be perfectly harmless, in fact, praiseworthy, if forbidden by law, is nevertheless a crime, and the person committing it could not excuse himself on the ground that it was not morally wrong, even though everybody should agree with him that it was not. On the other hand, no matter how much an act shocked our consciences, to commit it would not be a crime unless the law forbade it. If, on the other hand, "wrong" as used in the answer means legal wrong, the objection is that no one is permitted to say that he did not know an act was forbidden by law,—he must know it; that is his duty.

If we are to construe this answer so as to reconcile it to legal principles, we must construe this latter portion as meaning nothing more than that the accused did not know the natural consequences of his act. If he did know these, neither the fact that the act was not wrongful morally, nor the fact that he did not know it was forbidden by law, will avail as a defence.

We have been speaking of total insanity, that is

to say with reference to total insanity especially, but even what is known as partial insanity will be sufficient, if as a result of the partial insanity the accused did not know the natural consequences of the act in question. The rule of the English judges, from which I have quoted, seems to have in view cases of total insanity, and apparently intends merely to state the degree of such insanity which in law will acquit. In other words, it merely goes so far as to state that insanity of the character and degree there set out, that is of such degree as shows the accused to have been incapable of knowing the natural consequences of the act in question, is sufficient evidence of incapacity to entertain a criminal intent. This rule does not attempt to define insanity, but does in fact point out an element of legal responsibility (though not accurately) and states that such degree of insanity as will destroy this element (knowledge of the natural consequences of the act done) is a defence.

I have already stated that partial insanity may be a defence, and this brings us to the subject of delusions.

Delusions.—Partial insanity is usually treated of separately in the books, and is frequently spoken of as monomania. Just why—in law books at least—"partial insanity" should form a distinct title is not very clear. In fact, it is not clear why any classification of mental affections should be adopted or recognized in the law. I take it that the rule of responsibility is not different whether the accused be totally insane or merely laboring under a delusion. In either case, if the disease prevented him from knowing what would be the natural consequence of his act, he is not responsible; as to whether he would in either case be responsible if he did know what the consequence would be, we shall consider further on. If this element of criminal intent

were the only element to a crime, he certainly would be responsible under this latter supposition.

The English judges laid down a separate rule as to cases of delusion. Here is their answer on that topic:

“The answer must, of course, depend on the nature of the delusion. but, making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not otherwise insane, we think must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real.”

Which rule was somewhat differently stated by Chief Justice Shaw:

“Monomania may operate as an excuse for a criminal act when the delusion is such that the person under its influence has a real and firm belief of some fact not true in itself, but which, if true, would excuse his act.”

The sense of these passages seems to be that if the accused insanely believes in the existence of some fact which does not really exist, he is to be treated as though the facts as he supposed them really existed, and if their real existence would have justified or excused his act, he is to be acquitted; but if, on the contrary, his act would not be justifiable or excusable even though the facts were as they appeared to him, then he must be convicted. This is clearly treating an insane delusion as a mere mistake or as ignorance of fact, which we saw excuse the act, on the ground that the act intended was lawful. In these cases of delusion, where the accused would, under these rules, be acquitted, is it not a fact that he does not know the natural consequences of the act he is about to do? The natural consequences of his act are not foreseen, because of a mistake or ignorance of a material fact, under which mistake or ignorance the consequences of the act would appear to him entirely different from what they will actually be. This rule as to delusions is, then, in reality, nothing more than a statement of the principle of law, that

in the absence of a "criminal intent," as above defined, there can be no crime.

In all the cases of insanity which we have thus far examined, we have found that the defence has been allowed, not because the accused was insane in the sense of that term as used by alienists, but because the mental condition of the accused at the time he committed the act was shown to be such that he did not know the natural consequences of his act. Not only is that the case in respect of the defences of insanity which we have considered thus far, but it is, in fact, the case with respect to every other defence thus far specifically considered.

If we were now to formulate a rule as to insanity based upon the above considerations, it would read about thus:—

Where it is shown that the accused was laboring under such a defect or derangement of mind as not to know what would be the natural consequences of the act he then did, he is not responsible. This proposition is stated with reference to insanity. It might be stated more broadly and generally so as to include any case in which the accused did not know the natural consequences of his act, no matter what the cause of this disability, whether ignorance, or mistake of fact, or mental disease; but as we are especially concerned with the plea of insanity, the proposition is stated with reference to that disease.

We have thus far spoken of forms, or rather degrees of insanity, the existence of which, when proven, is undoubtedly a good defence. Let us now consider whether there are any other cases or degrees of mental defect or derangement which confer irresponsibility.

It has been frequently urged that the rule of knowl-

edge of the character of the act done or that it was wrong (or, as it should be stated, of the natural consequences of the act in question), is too narrow, and that there are many cases in which the accused, although he had the mental capacity contemplated in this rule, should still be held irresponsible, for the reason that he was laboring under disease affecting his mind to such a degree and in such a manner, that although he could discriminate as to his acts and comprehend his relations to other persons and things—*i. e.*, know what would be the natural consequence of the act,—he yet was unable, on account of this mental defect, to refrain from doing the wrongful act ;—that it was done under duress of the mental disease, and that, consequently, he should not be held responsible. Many medical experts have a peculiar way of pronouncing such a person irresponsible upon the supposition, I suppose, that responsibility and irresponsibility are medical questions. Now, a medical expert has no right to tell a jury that the accused is irresponsible, or, on the other hand, to tell them that he is responsible. A person is responsible or not according as the law holds him liable or excuses him, and if the law should be that all insane persons committing acts forbidden by law should be punished just as are sane offenders, the insane would be responsible. The question involved is legal responsibility, and this depends on the law itself.

Since the issue involved in the criticism of the test of responsibility which we considered is a legal question, let us inquire whether or not according to law as it now is in force a person who does an act under duress of a disease affecting his mind is excused even though he possess the mental capacity which would hold him liable under the rule as to intellectual capacity heretofore

considered. When we have determined what the law in any locality is on this point, we know whether or not the person in the condition here described is responsible or not. Whether the law is wrong or not, or should be modified, is another question, which we shall also consider. And first, what is the law?

By the law of England, a person, although insane, is responsible if he knew "the nature and quality of his act" or "that it was wrong," irrespective of what effect his insanity might have on his power of self-control. In other words, if one knows an act to be wrong, he must refrain from doing it, and he is not allowed to show that the insanity deprived him of his freedom of will.

This is also the law in many—I might say the majority—of the American States.

Quite a number of the American States, however, allow the defence here urged, and admit evidence going to prove that, although the accused had the capacity to know the natural consequences of his act, he yet was unable, by reason of disease affecting his mind to desist from doing the act which was forbidden by law. Since the courts governed by the common law are thus divided on this question, it will be proper to inquire into the reason of this conflict of opinion, and to select that doctrine which seems most consistent with settled legal principles and best calculated to carry out the objects of the law.

In considering the question whether one who can show that he was by mental disease deprived of his power of self-control, although his intellectual faculties were not so impaired as to excuse him on that ground alone, should be held responsible or not, it will be well to recall the elements of legal responsibility. We have seen that

a "criminal intent" and "free will" are essential to responsibility, and that if either of these elements are wanting there is no crime. In the question now before us, the first element of responsibility (criminal intent) is present. The problem, then, to be solved is simply this : Is it a defence to a criminal charge to show simply that the accused was laboring under insanity of such a character or degree as shows that he could not refrain from doing the act in question ?

The legal principle that where an act is done involuntarily,—where it is not the free act of the accused—he is not responsible for it, is clear. And this principle is, I take it, admitted by all the courts whether they allow the defence now under discussion or not. The real question which lies at the bottom of this troublesome problem is : "What evidence is competent to show an absence of free will?" and it is upon this rock that the courts have split.

Those courts which refuse to admit evidence that mental disease destroyed the power of self-control irrespective of its effect on the intellect, exclude this evidence upon one or other of two theories, or perhaps both.

They proceed on the theory that where one is able to know the natural consequences of his acts, evidence of insanity does not even tend to prove a want of freedom of will ; or upon the theory that though it could be positively shown that insanity did destroy the will while it left the intellectual capacity necessary to responsibility, such fact would constitute no defence whatever.

The former theory is based upon a metaphysical notion as to the nature of free will ; that the freedom of the will is limited only by its intelligence. The latter position is taken on grounds of policy.

In regard to the theory that the will is always free to act whenever the mind can foresee the natural consequences of an act, even though the mind be diseased, that theory is all but completely overthrown by the more recent investigations of medical science. It would not be very extravagant to say that the medical writers of this day are unanimous in denying this theory. And if this were the only ground of excluding evidence of this character of insanity, I must say there would be little trouble in solving the problem before us.

But the most serious objections to admitting evidence of the kind of insanity now in question, arise from considerations of public policy. The doctrine that this degree of insanity is a defence is extremely dangerous, and I presume the denial of this defence has been greatly due to the danger attending its admission. We all know that when every other plea fails, insanity is adopted; that many have been acquitted under this plea who fully merited the direst punishment. Then it must be remembered that science can not point out to us specific classes of mental disease and say: "Where one of these classes of insanity is found, the patient has no self-control." It tells us rather that each case depends on its own circumstances; that each case must be examined by itself and determined for itself. Now, when this defence is allowed very great latitude is given the jury, and the safety of society is put into their hands,—and the hands of the medical experts who may be called to the trial. This seems to be the reasoning where this defence is denied. And it can not be gainsaid that it would have great weight with the judges—those called to administer the laws; to protect society; those to whom society looks for protection, and holds responsible if they are remiss in that holy duty.

Another objection to admitting proof of mental disease as destroying the element of free will is the fact that in all cases where a defence has been allowed on the theory that the act was not the result of the offender's free will, that free will was overcome by some power outside of the accused and over which he had no control. Physical disease was never allowed as affecting the freedom of will—nor could it properly—and hence it was only natural to exclude proof of mental disease offered for the same purpose.

These seem to be the principal reasons which are to be urged against permitting the defence under discussion, and unless they can be answered, or stronger reasons given why this defence should be admitted, it ought not to be allowed.

Let us now consider these objections.

To the first objection that the freedom of the will is only limited by the intelligence of the individual, and that disease of such a degree as leaves his intellect sufficiently strong to entertain a criminal intent, can not destroy the power of choosing between doing and refraining from any act, the answer is simply that science has satisfactorily shown that as a matter of fact disease can thus affect the mind and will.

Now are the objections based upon public policy unanswerable? While it is true that the plea of insanity is frequently improperly resorted to, and that guilty men occasionally escape, we can not lay much stress on that, for we are all willing and proud to admit that our criminal law proceeds upon the principle that it were better that ten guilty should escape than that one innocent should suffer. Moreover, the danger to society is not so very great, for madmen are not now, after their acquittal from a criminal charge, turned loose upon the community, but confined to asylums for treatment.

The point which is sometimes made, that to allow the jury to determine in each individual case whether as a matter of fact there existed disease in the accused affecting the mind to such an extent as to have deprived him of the power to refrain from doing the act, would be to permit them to determine what is legal responsibility, can not be admitted, for if the judge instructs them that if the defendant was suffering under a disease of mind which was of such a degree or character as to have deprived him of the power to refrain from doing the act, this instruction defines responsibility and the jury merely decide a question of fact, which it is their province to decide. Besides, the court determines what facts may be proved as showing the existence of such disease, and will rule out as incompetent any improper evidence. Moreover, it is a fact that where the defence is made on the other theory under which insanity excuses, the jury and experts have exactly the same latitude allowed them as they would have here. They are to determine whether the defendant "knew the nature and quality of his act" or "knew that it was wrong." Each individual case is determined according to its own circumstances under this rule, as it would be in the other, and the jury might with the same propriety be said to determine what constitutes responsibility, when acting under this rule as when acting under the one proposed. The fact is that the jury do not determine what the law is when instructed under this rule, nor would they if instructed upon the theory as to the loss of self-control. In each case the law would determine exactly what is essential to responsibility, what facts are admissible to disprove either of these elements and the jury would find the existence or non-existence of these facts.

The other objection to allowing this defence, drawn from analogy, requires no answer. It merely amounts to this: "We have not allowed proof of mere physical disease as competent to disprove free will ; therefore we will also disallow proof of mental disease although the mental disease be of such a character as is acknowledged will disprove the existence of a free will."

We have now answered all the objections to allowing proof of mental disease of such a character as will show to the jury that the defendant could not help doing the act.

Since, then, there is no valid reason for disallowing this defence, it should be admitted since it so clearly destroys one of the essential elements of crime.

From what has preceded we have seen that as to insanity all that the courts have done has been to instruct the juries that to constitute a crime the accused must have had a criminal intent as above defined, and that if his mind was so affected by disease as to make it impossible for him to have had this criminal intent, he must be acquitted. They have not attempted to define insanity as a disease. They have merely told the jury what one essential element of crime is, and if they (the jury) should find that that element was absent, that they must acquit. Now, there is another element just as essential to crime, which is free will, and how can courts refuse to instruct juries that if there is an absence of this free will there can be no crime? Insanity was allowed to be proved as showing this incapacity to have a criminal intent because science showed that insanity did in some of its phases and degrees have this effect. The same science has now shown that insanity sometimes has the effect of depriving the sufferer of his power of self-control ; why then should they, or how can courts refuse to allow evi-

dence tending to show that insanity in the case in question did have the effect of compelling the defendant to do the act in question, though he knew it to be forbidden, or had capacity to know it was forbidden?

In many cases of so-called partial insanity, where the accused was laboring under delusion, he has been acquitted, even though he must have known the results of his act, or "that it was wrong," and the acquittal held proper. In these cases the prisoner was undoubtedly properly acquitted, but not because he did not know the natural consequences of his act, but because from duress of his disease he was unable to refrain from doing the act. The juries in these cases acquitted under the so-called "right and wrong" test, the test heretofore considered. In the celebrated case of Hadfield, in which Lord Erskine made his famous argument, the defendant unquestionably knew that the act he was about to commit was a crime—that was his very reason for doing it—still he was acquitted, and all agree that he should have been acquitted. Why, in fact, was he acquitted? Was it not because the insane delusion so affected his mind as to make it impossible for him not to do it?

That free will is an essential element of crime, and that it should be left to the jury to determine whether or not the accused suffered under such a degree of insanity as destroyed his free will, was recognized by Chief Justice Shaw in the case of *Commonwealth vs. Rogers*, 7 Metc. 500, he said:

"If then it is proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason, conscience, and judgment, *and whether the prisoner, in committing the homicide, acted*

from an irresistible and uncontrollable impulse ; if so then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it."

That a person should be acquitted where he acts from an uncontrollable impulse resulting from mental disease, ought, in my humble opinion, to be the law. On strict legal principles this defence must, I think, be allowed. That this principle has been acted on unconsciously in many cases where those laboring under a delusion, but otherwise apparently sane, were acquitted, is my firm belief.

It might be said that under this principle many laboring under delusion might be acquitted who under the English rule as to delusion would be clearly responsible. This is very true, and this is exactly what should recommend its recognition, for many who are under the English rule held responsible, should be excused, and only these would be embraced in the principle which we contend should be adopted. It is just wide enough to include those cases which the other rule improperly excludes, and also covers those cases which the other rule properly includes. The delusion rule treats one laboring under a delusion, (and the existence of which is always considered as a certain proof of insanity), as though the delusion were a mere mistake of fact and the deluded creature perfectly sane. It assumes that "a man having an insane delusion has the power to think and act in regard to it reasonably; that he is, in fact, bound to be reasonable in his unreason, sane in his insanity."

In trying to bring cases within this delusion rule, cases in which the accused was so much under the duress of his mental affliction as to be unable to resist the act, delusions of the most remarkable character, and which as

pure mistakes of fact would never have been considered as sufficient to excuse or justify the act, have been considered sufficient to warrant an acquittal. In fact, the delusion rule is a mistake, and has been the source of many mistakes and absurdities in its application.

From the somewhat extended view of the question I have taken it will appear, in my opinion, that the law governing the defence of insanity, should be as follows :

(1.) Where it is shown that the accused at the time of committing the offence was laboring under a disease affecting the mind to such a degree that he was not able to foresee the natural consequences of the act in question, he is not responsible for doing that act.

(2) Where the defendant is laboring under disease affecting his mind, which is of such a character or degree as to make it impossible for him not to do the act, he is not responsible even though he had sufficient reason to foresee the natural consequences of that act.

What is evidence of insanity must be determined by the court at the trial, but the jury determine whether it is of such a character or degree as contemplated by these two rules.

In conclusion I might add that the second rule and about which there is so much dispute, meets the full approval of that distinguished authority on criminal law, Justice Stephen, although it is not the rule which he approves so much as it is the principle underlying it, and which, of course, is the important point. Lord Chief Justice Cockburn also contends for the extension of the old right and wrong test, so as to include those cases which would fall within our second rule. The American writers of authority on this subject also favor this view.

Moreover, the criminal code of Germany contains the following:

“There is no criminal act when the actor at the time of the offence is in a *state of unconsciousness, or morbid disturbance of the mind, through which the free determination of his will is excluded.*”

This provision is a concise enunciation of the law on this subject, and the views expressed in the pages of this essay are, I think, in full harmony with it.

To one further point I must call attention before closing, and that is this. While the jury decide whether the degree or character of insanity contemplated by the two rules above deduced exists in the accused, it must be remembered that what they determine is the degree of insanity under which the accused is suffering. The court does still, and must determine what is to be admitted as evidence of the existence of insanity. In other words the courts determine the competency of evidence, while the jury determines its weight. In determining what is competent evidence to prove insanity, the courts must have a clear conception of what insanity is. As showing its existence the courts admit proof of abnormal or deranged action of the intellect; but an affection of the mind (by which is meant the intellect,—the perceptive and reasoning faculties) must be shown. While the mind is shown to be unaffected there can be no evidence admitted to show want of free will. Insanity, then, so far as the law is concerned, is a disease manifested by abnormal action of the intellect, as distinguished from the feelings or emotions. When the intellect of the accused is thus shown to be affected, when insanity in this sense is shown, it then remains for the jury to determine whether or not as a result of the existence of this insanity the accused had the capacity to know the natural consequences of his act, or if he did know the consequences of the act, whether he was yet

powerless, as a result of this insanity, to refrain from doing it.

Whether Courts should receive other proof of insanity than such as shows intellectual derangement is a question which can barely be touched upon in this place. That the great majority of our Courts hold only such facts competent to prove the existence of insanity as do show such abnormal action of the intellectual faculties is certain. Now, should other evidence than such as shows an affected intellect be admitted as competent to prove insanity in law? In other words, should the legal definition of insanity be made more extensive?

The answer to this question depends on several considerations. First, has it been satisfactorily shown that disease may affect the emotions or will without having any apparent effect on the intellect? Second, if it can, is it possible for Courts to recognize this kind of insanity without greatly endangering the security of society?

As to the first question, while there does seem to be some doubt as to it entertained by many of the medical profession, still, I think the weight of authority, even of that profession, denies the possibility of insanity of the emotions or will co-existing with intellectual sanity. Psychology certainly repudiates such notions; even the psychology of the materialists holds that the different faculties of feeling, knowing and willing are so closely connected that the powers of the one cannot seriously be impaired without affecting the others. In fact, it is hard to understand how the will or emotions can thus be affected, unless as a result of abnormal action of the intellect. Emotions and volition both are dependent upon reason, and where the sensations, perceptions and reason are not affected, it is hard to conceive of the feelings or will being thrown out of balance. On the other hand,

where it is shown that the intellect is affected, whether it be by the influence of insane delusion or otherwise, it is quite likely that such defect would result in an impaired will, or in disturbed emotions which in turn would impair the will. For when the intellect is shown to be affected, we have a case in which it may be shown that on account of false perceptions or false logical processes and conclusions, the accused was in such a state of mind as to have considered the wrongful act either one not forbidden by law, or one which he must do, and the impulse to do which, resulting from his diseased condition, he is unable to resist. But this irresistible impulse is a result of a diseased intellect, and one acting under it would be excused under the second rule which we have adduced.

Inductive science has not as yet shown that perverted emotions and impaired will can co-exist with mental (intellectual) sanity, and deductive science utterly denies it. Hence, of course, the law cannot allow as a defence proof of the existence of a certain condition, the possibility of the existence of which character of condition is denied by the great weight of authority.

But even if this first question were answered differently, even supposing that advancing science could show that this state of the emotions and will might co-exist with mental sanity, it is questionable whether the law could allow proof of this state or condition as proving insanity, and submit to the jury whether its degree was such as would require an acquittal under the rules above stated.

Such "insanity" could hardly, if at all, be distinguished from downright depravity, since its existence is shown by conduct, and such defence, if admitted, would necessarily result in the acquittal of many of those

against whom society must be protected,—of wicked criminals. It must be remembered that the principal object of law is the protection of society, and if, in the administration of the law, an innocent person may occasionally suffer, it is his misfortune. While the administration of the law is in human hands there must be error; exact justice cannot be received from human hands. Courts of Justice must be guided by practical rules,—rules which can be used to advantage in protecting society at large. As was said by Mr. Justice Curtis:

“The law is not a medical or metaphysical science. Its search is after those practical rules which may be administered without inhumanity, for the security of civil society, by protecting it from crime.”

It is better that some few should suffer unjustly than that, by too lax rules, the security of society should be endangered.

The law has, I think, drawn the line just where it should; to go further would be extremely dangerous.

If want of free will could be shown as above, in the absence of intellectual derangement, the next step would be to admit proof that no person has the power to determine his own acts. This would bring up the question whether punishment was justifiable at all,—a question which cannot now be considered, for I fear I have already exceeded the proper bounds of an essay. There are some who hold that there are no criminals in the world, and that all offences committed are due to imperfect physical constitution of the offenders, who should, therefore, be treated for disease instead of being punished. If, in conformity to the theory of these visionaries, the protection of the law were removed, I feel certain they themselves would be among the first

to complain and clamor for a restoration of criminal laws.

And now to conclude. Although we may be painfully conscious that the law is not perfect, and especially the law relative to insanity, we may gather some satisfaction in the reflection that the law is a growth, and by a process of evolution will gradually grow more and more perfect, and in the course of which evolution the questions which we have been considering will, together with many other difficult questions, be correctly determined.

ARGUMENT FOR COMMUTATION OF SENTENCE.—CASE OF PEOPLE vs. SARAH J. WHITELING.

By DR. ALICE BENNETT,
Superintendent State Hospital for the Insane, Norristown, Pa.

To the Honorable the Board of Pardons, for the Commonwealth of Pennsylvania.

GENTLEMEN : I have examined Sarah J. Whiting in Moyamensing Prison on five different occasions, both before her trial and since she has been under sentence of death. I have obtained the history of her life from herself and from others, and have made myself familiar with the conditions attending the series of dreadful crimes of which she stands convicted.

Based upon a study of the facts so obtained, my opinion, as an expert in mental diseases, unqualified by any shadow of doubt, is that Sarah J. Whiting was mentally irresponsible when she committed the crimes for which she is now under sentence of death.

Believing this, I hold it a duty, which I have no right to evade, to lay this opinion before your Honorable Board and to ask your consideration, somewhat in detail, for the facts upon which that opinion is based :

First—Sarah J. Whiting has a mind of low grade ; notably so. This has been conceded by all (within my knowledge) who have seen her. Her mental grasp is weak. Neither before her trial nor since her conviction and sentence has she shown any satisfactory comprehension of the awful nature of her crimes and their consequence to herself. This low grade of intellect is not

necessarily, in itself, a condition of irresponsibility, but weak, unstable and yielding to the slightest influences, it is such a mind that is easily unbalanced when exciting causes are present.

Second—In the conditions of Sarah J. Whiteling's life at the time I find causes sufficient to produce the temporary insanity which I believe existed when she committed her first, second and third unnatural crimes.

Here I must ask permission to introduce to your Board considerations purely medical, believing it necessary to a proper study of this case.

The nervous system of every woman is marked by fluctuations and critical periods too little understood, which cannot safely be ignored. It is right for me—a woman—to say to this Board what but a woman can know, that under the happiest conditions in a typically healthy woman the physiological crisis which recurs once in four weeks during the child-bearing period is one which stirs her nervous system to its profoundest depths. Well it is for her if self-control and mental equipoise have been her habit, and if no extraordinary strain be forced upon her at this time. But with the woman of weak brain it is not always well. She is too often the hapless victim of whatever adverse influence assails her at this time, and our hospitals for the insane show numberless cases in which the maniacal outbursts occur only at the menstrual period.

It needs no demonstration that grave consequences are liable to follow any interference with a function whose normal physiological performance is attended with serious nervous disturbances; and here again our hospitals bear their testimony in the numbers of cases of insanity which are produced by some interference with this "habit of nature."

In the case of Sarah Jane Whiteling, the normal occurrence of the menstrual periods had always been preceded by dizziness and a fullness of the blood vessels of the head, and for the past year these have been interrupted, whether by the early approach of what is commonly referred to as the "change of life," or by the local diseases which now exist, is not important. It is of the first importance to know that her menstrual period occurred naturally in February, 1883, that it failed to appear in March, that it failed again in April and again in May. (It has since occurred twice, in June or July, and in December.)

We have only to consider the external conditions of her life at this time when she should have been most carefully guarded, to see that a combination of circumstances most favorable to the production of insanity existed. We have a woman of naturally weak brain which has been subject to periodical congestions at the menstrual periods in whom the function abruptly ceases and the brain congestion thereby fails of its usual relief. She is further dragged down by internal diseases (falling of the womb with internal inflammatory changes) and at the same time is subjected to an extraordinary mental and physical strain, living in extreme poverty, having nursed her husband through a protracted sickness, both night and day, and having no help in caring for her household, and in providing for the wants of her two little children.

Here, I repeat, are all the conditions necessary to the production of insanity, conditions which have been seen to produce insanity over and over again.

It is plain to me from the evidence and from her own story that she was in an unnatural mental condition over a period of three months or more, and that periodi-

cally with the effort of nature to re-establish the interrupted function her mind was unbalanced to a degree which rendered her incapable of judging between right and wrong and of properly controlling her own actions.

The dates of her several crimes have a significance of very great importance here :

John Whiteling was buried March 2d ; Bertha Whiteling was buried April 26th ; Willie Whiteling was buried May 28th. (From notes of the undertaker's evidence.)

A strikingly similar case was that of Annie Gaskin, who murdered her infant by cutting its throat in December, 1887. She was tried in Philadelphia, acquitted on the ground of insanity at the time of commission of the act, and was committed to the Hospital at Norristown, where I had her under observation for more than a year. Annie Gaskin was also of low mental grade, although she had always been able to work for her living, had married and cared for her own household. She also had been subject to pain in the head and dizziness at her menstrual periods, and it was at such a time when under great grief and anxiety following the death of her husband, with extreme poverty confronting herself and little children, that she took the life of one of them with no apparant realization of the act at the time. There was no evidence at the trial that she had ever been thought wrong in her mind previous to this act, but no one could be with Annie Gaskin without feeling the assurance that she was incapable in her right mind of doing harm to any creature. She was discharged after a year's confinement and given into the charge of her friends.

The case of Caroline Metzgar in November, 1882, was one that excited popular execration at the time. A German girl, eighteen years of age, of apparently sound mind and body, she arose in the night and made a

savage attack with the hatchet upon an infant and its mother, her mistress, who had shown her exceptional kindness. Neither of her victims died, but the act was homicidal in intent, if not in fact, and may be so judged for our purpose. It was at first difficult to arouse any sympathy for this girl, who at times seemed both stupid and sullen. I do not know whether she was acquitted or whether it was as a convict that she came to our hospital in June, 1883. She was found to be suffering from a mal-position of the uterus, owing to which menstruation had never been properly established. At each periodical struggle of nature to establish the function she became melancholy, restless and unlike herself; local mechanical treatment was instituted, the uterus restored to proper position, gradually her periods were regularly established, and she became altogether a different girl, one whose good nature, honesty and industry won the confidence of all who knew her. She was discharged entirely well in thirteen months. Two years later she visited me and was about to be married, and I do not doubt that she will be for the rest of her life a worthy member of society.

In neither of these two cases was insanity proved by direct evidence, it was inferential and probable. In the nature of the case satisfactory legal evidence of temporary functional insanity must always be difficult, if not impossible to produce.

In the case of Sarah J. Whiteling there was evidence strongly corroborative, at least to the medical examiner.

That Mrs. Whiteling's brain had been subject to repeated periods of over-fulness of the blood vessels was proved absolutely by examination of the eyes by the ophthalmoscope, an instrument by which light is thrown

into the eye, making it possible to see the vessels at the back of the eye-ball. This examination was made at my request by Dr. J. J. Lautenbach, an expert who has assisted me in the study of about 600 cases of insanity by this method, which gives most positive results.

Mr. Bailey, a brother-in-law of Mrs. Whiteling's, testified that "he had always thought there was something lacking," that he had "taken notice sometimes she could talk sensibly, and sometimes she could not."

Undertaker Kehr, who buried the three victims, testified that "all through he had considered her of unsound mind," and described her eccentric and unnatural conduct on different occasions. This witness, while believing Mrs. Whiteling to be of "unsound mind," was not willing to swear "that she was crazy," a distinction without a difference.

In my own examination of Mrs. Whiteling's mental condition, I find that she has had hallucinations of hearing (false hearing), one of the commonest symptoms of a disordered brain. I believe that she has had these hallucinations at least once since her conviction.

The utter absence of motive for her crime is also corroborative. It has been charged that the insurance money was a motive; but these small sums were almost entirely expended in the burial of her victims, and it was in evidence that the undertaker felt called upon to check extravagant outlay on these occasions. Again, it has been said that her motive was to get rid of her husband and children as encumbrances, but it was in evidence that she was an affectionate mother, showing all a mother's natural love for her offspring.

Sarah Jane Whiteling is essentially a weak woman, weak mentally and morally. Her life has been evil because evil was the direction of the least resistance.

Estimating her mental characteristics as they present themselves without other evidence it is impossible to believe that she has, or ever had, when in her right mind, the force of will to plan and execute the deliberate murder of one, still less of three human beings, and these the lives nearest to her own.

I cannot sufficiently apologize for the unexpected length of this communication, which may seem an unwarrantable intrusion upon the time of your honorable Board, but I have been compelled, in trying to make my meaning plain, to go somewhat into detail in speaking of facts which have not heretofore been sufficiently emphasized in medical jurisprudence. I note with satisfaction that the Medico-Legal Society of New York has during the present week ordered an investigation of "Insanity as a Result of Sexual Causes," with special reference to the case of Sarah J. Whiteling and others now before the public.

I do most earnestly join with those citizens of the Commonwealth who are asking you to commute the sentence of Sarah J. Whiteling to imprisonment for life. I have no sentimental objection to the infliction of the death penalty in general, or upon this prisoner in particular. She is resigned to her fate, and for her this quick end to a wretched and misspent life is perhaps as well as any other. But for us it is not well ; and I cannot think it other than a reproach to the boasted enlightenment of our civilization and a blot upon the fair fame of our Commonwealth if the woman whose history I have outlined shall be "hanged by the neck until she is dead."

*PERIODIC INSANITY AS ILLUSTRATED IN
THE CASE OF SARAH J. WHITELING,
AND OTHERS.**

BY ALICE BENNETT, M. D.,
Superintendent Pennsylvania State Hospital, Norristown, Pa.

MR. PRESIDENT AND FELLOWS OF THE MEDICO-LEGAL SOCIETY:--I have come here to-night to appeal to you, and through you, on behalf of woman as a criminal ; woman, upon whom nature has laid peculiar burdens, by virtue of which peculiar susceptibilities and dangers are inherent in her organism ; the complex forces of whose nature, too seldom understood even by herself, are as a sealed book to the mass of law-makers and law-dispensers, who, with no knowledge of the forces with which they are dealing, remorselessly judge and condemn the results of the operation of those forces.

Gentlemen, I feel no humiliation in confessing to you that woman is, in some directions, weaker than man. She is a combination of strength and weakness ; as strong in her strength as weak in her weakness ; if it happens to be my mission to speak to you to-night only of the latter, do not look upon me as a renegade ; strength lies not in the ignoring of weakness but rather in its courageous recognition.

Without entering at any length into physiological questions I may be permitted to recall a few fundamental facts :

The physiological life of woman, as woman, is strongly

* Read before the Medico-Legal Society, March 13, 1889.

marked by fluctuations and epochs of special significance.

There are in nature no sharply dividing lines, but for the sake of convenience we may speak of :

First—The initial or period of sexual life, or pubescence ; an indefinite and varying time vaguely accepted as carrying with itself the liability to some nervous disturbance.

Second—The closing period of sexual life, the menopause, or “change of life,” also indefinite as to time, and also accepted in the popular mind as a “critical” period.

Every hospital for the insane has many cases of insanity which had their starting points at one of these two periods, and in all the standard works on mental and other diseases of women, we find mention of insanity and other neuroses of puberty and of the menopause.

Between these two extremes we have the recurrence once in four weeks, interrupted, in the healthy woman, only by the special event of child-bearing, of the mysterious functional disturbance known as menstruation.

Physiologists still disagree as to the precise causes and significance of this event in the animal economy ; into this discussion we need not enter, but we are bound to study it in its manifestations and effects.

I wonder if anyone, not a woman, can ever understand how this event, under the most carefully chosen conditions, stirs her nervous system to its remotest fibre ; and yet it should be easy to believe, when we remember that we are here considering forces which have to do with the beginnings of life itself.

Physiologists have measured and demonstrated an “increase of vascular tension” throughout the whole system, in addition to special localized changes attending this function, but there are effects which cannot be

measured—scarcely described—a condition of unstable equilibrium, a weakened resistance to external forces, and a *potential liability* to explosive nervous phenomena, not sufficiently emphasized in any of the works I have met with on the nervous diseases of women, and almost wholly unrecognized in medical jurisprudence, in either practice or theory.

Understand me, I am not of those who look upon each recurring menstrual period as one of “temporary insanity,” during which every woman is, of necessity, incapacitated mentally and physically for the ordinary duties and responsibilities of life; far from it, but I do maintain it is a period no woman dare ignore.

A perfectly healthy woman, strong in the habit of self-control and of mental equipoise, subjected to no extraordinary physical or mental strain, scarcely bends before the passing storm; but in so far as these ideal conditions are departed from, so far is some deviation from the normal equilibrium of the brain and nervous system possible, or even probable.

I repeat that there resides in every woman a *potential liability* to explosive nervous phenomena at this period, in its normal physiological occurrence, still more in any abnormal interference with its regular recurrence.

Conditions under which these potential disturbances are most liable to become actual, in other words, the causes of periodic insanity, and other nervous disturbances, among women, I would group, for convenience, without pretending to scientific completeness, as follows:

First—Subjective Causes:

(a) A weakened resistance of the brain centers which may be either natural, the result of disease, or the result of defective training.

(b) Valvular disease of the heart.

From my own observations I have come to consider this of very great importance. Some years ago, in a paper presented to the Medical Society of the State of Pennsylvania, I called attention to the almost constant coincidence of valvular heart disease with a form of insanity characterized by hallucinations of the senses with delusions of persecution, suggesting a relation of cause and effect.

More recently, approaching the subject from another standpoint, I stumbled upon the observation that nearly all my cases ascribed to "change of life" were of this type and associated with valvular disease of the heart.

I could give you the history of about fifty of such cases possessing marked features common to all.

It is only during the preparation of this paper that I have come to see that the same condition runs through most of my cases of periodical mental disturbance, the history of some of which I want to give you, if time permits.

And is there not reasonableness in the assumption, which is borne out by the history of these cases, that the delicate structure of the brain must feel, more or less according to its powers of resistance, any defect on the part of the heart, which, acting somewhat after the manner of a pump, supplies it with the elements necessary to its integrity, that, while under ordinary conditions the brain may resist successfully the threatening danger, at a time of extraordinary susceptibility, such as exists at the menstrual period, it may give way, either temporarily, recovering to go through the same experience at the next period of special weakness, or, failing to recover its lost harmonics, to remain permanently overthrown?

(c) Local diseases of the generative organs and appendages, acting reflexly.

(d) Any disease or conditions depressing the system generally.

Second—Objective Causes.

Under which may be grouped all the external sources of irritation and nerve exhaustion incident to daily life.

When I consider the life-conditions of the average woman of the middle and lower classes, the large and repeated demands on her vitality made by frequent child-bearing, with the never ending wear and tear of body and mind, which men so seldom understand, inseparable from the cares of a household, in addition to which she not infrequently must do some special work to aid in the support of the family; when I consider how often is lacking in her the kind words and helpful sympathy which alone makes such a stupendous drain upon her vital forces possible, safely possible, then I wonder, not that women become insane, but that they do not more often become so.

A recent writer says: "It may be questioned if even physicians at all times fully appreciate the demand made upon the female organization by reproduction.

* * * The repetition of pregnancy and lactation, with the duties and cares which multiply as life advances, exhaust the nerve power and lead in many cases to mental derangement." (*Skene's Treatise on Diseases of Women*, 1888).

Doubtless the mental aberrations of the menstrual period are more frequent than have been noted, but being temporary and occurring in the form of eccentricities, or alterations in dispositions or conduct, they are not recognized as such in family life.

If there be a nerve explosion in the form of some act of violence, the woman at once becomes a criminal, and it is a matter of record that the most unnatural and

monstrous deeds have been done by women at such a time, deeds the very unnaturalness of which should plead for the doer, but which on the contrary only serve to intensify the popular clamor for the blood of the unfortunate, so-called criminal.

Of such a nature, I maintain, were the crimes of Sarah J. Whiteling, who administered poison to her husband, daughter and son, on March 20, April 20, and May 22, respectively, from the effects of which they died and for which she is to be hanged March 27.

I believe the case of sufficient interest to present to you somewhat in detail :

Sarah Jane Whiteling, born Goff, age 40, of German extraction lost both parents before her recollection; no reliable family history obtainable. Her early associations were evil; she was never sent to school, and learned to read after she was married.

She confesses to have lived an irregular life, beginning at twelve years of age, which was passed in the West until after the Chicago fire, when she came to Philadelphia with her first husband, a man named Brown. At that time she had no living children, but several miscarriages.

In about a year, Brown was committed to prison for some serious offence, and she afterwards lost sight of him altogether.

For several years following she lived a dissolute life. She gave birth to one child, which lived but a short time, and, again, at the Philadelphia Almshouse, a child, Bertha, was born—one of the victims of the poisoning. The father of Bertha was one Thomas Story.

She once spent two weeks in the county prison for stealing.

She was married to John Whiteling March the 27th, 1880, and claims to have been entirely faithful to him from that time. By the marriage she had one living child—William—also a victim of the poisoning, born March 27th, 1887. She also had two miscarriages.

She describes her life with Whiteling as one of hardships. While not positively unkind, he was a drinking man, indisposed to work, and allowed her to wash, scrub, etc., for the support of the family. He also had been in prison, as had other members of his family.

She claims to have been in poor health much of that time, and was at times treated for falling of the womb and other troubles.

At her menstrual periods, she habitually suffered from pain in the head and back, and dizziness—some times compelling her to go to bed.

In February, 1888, John Whiteling was taken sick, was at times violently delirious, and required very close attention, in which she had no help either by night or day for about four weeks, in addition to taking care of her home and two little children. In her own words, she was “nearly wild” with the strain upon her.

At this time her menstrual period was due and did not appear, and her mental strain was aggravated by the fear that she was pregnant.

On the morning of March the 20th, John Whiteling was very restless, and she says that she felt “nearly distracted.” Some members of his lodge were coming to stay with him that night for the first time, and she says the thought came to her: “If I can only give him something to keep him quiet until the men come.”

She had a box of “Rough on Rats” bought for the purpose of killing vermin in the house some time previously. She was preparing some egg-nogg for the sick man,

and something seemed to say to her: "Go to the closet and get some of that powder." She says the thought of killing him was not present, but that she "took a little of the powder on the end of the spoon, and mixed it with the drink." He died the same day, and she became frightened at what she had done, and dared not speak of it. A certificate of death from "inflammation of the bowels" was given.

In April, Bertha Whiteling, aged 9 years, then attending school, was accused of stealing from her teacher. It was put in the papers, and her mother was much worried about it. Finally, on the 20th of April, she gave to her also a dose of "Rough on Rats." It was charged by the prosecution that several doses were given, but I have seen no proof of it, and Mrs. Whiteling says positively that it was but one.

The child lived four days, and the same physician gave a certificate of death from "gastric fever."

In explanation of this second murder, Mrs. Whiteling at one time said she "thought it would make Bertha a better girl if she could give her something to make her weak and sick." At another time, she said it was because she thought "it would be better if they were all under ground together."

In a confession taken down by the Coroner, I am told that she said she wanted to get rid of them all because they were an encumbrance, or words to that effect. This last paper I have not been able to find among the other records, and I have never been able to extract from Mrs. Whiteling any sentiment of that sort, which, indeed, seems inconsistent with all my knowledge of her.

On May the 22d, she gave some of the same powder to her son Willie, aged 2 years, and he also died after a sickness of four days.

The same physician refused to attend this third member of the family, and a young doctor in the neighborhood, who saw the child once, gave a certificate of death from "congestion of the bowels."

Here she says she had the intention of killing her child, and to end her own life, so soon as he was buried, because she "wanted the whole family together under the ground."

Coming home from the burial of Willie, she says she mixed a last dose of the poison intended for herself, and kneeling down asked God to forgive her for what she had done, and what she was about to do. While on her knees, she "felt the touch of a hand on her shoulder, and a voice said: 'Don't do it; I forgive you.'" Several times she tried to take the poison, but "something seemed to prevent her lifting the glass," and she gradually came to believe that she was forgiven, and went to church, resolved to live a better life.

It was one week later that the matter was brought to the attention of the coroner, the bodies exhumed and proofs of poisoning found.

Mrs. Whiteling made immediate confession, was committed to prison, tried in November, convicted of "murder in the first degree" and sentenced to be hanged March the 27th, 1889."

I saw this woman three times before her trial and have seen her three times since she has been under sentence of death.

In person she is about five feet in height, squarely built, with a tendency to the accumulation of fat; all her muscular movements are heavy and lack precision; complexion dark; expression lacking intelligence. There has been no dissent from the common judgment that her mind is of a low order. Her power of attention is de-

fective ; she rambles from the subject in conversation and dwells disproportionately upon trifles. At no time has she seemed to comprehend the awful nature of her crime and their import to herself. At this time she is looking forward to her execution with apparent indifference, speaks of it with smiles, and is convinced there will be no reprieve, because "her Willie was born on the same day of the month appointed for her execution."

On examination I found her suffering from prolapse of the uterus, with chronic enlargement and internal inflammatory changes.

Menstruation during the past year has occurred only in February, June and December.

She has a mitral regurgitant murmur of the heart, so slight as almost to escape detection, but also observed by one of the experts for the commonwealth.

The pulse was irregular both as to frequency and volume. In connection with the mitral defect of the heart and the unequal volume of the pulse I attach considerable importance to the hallucinations of hearing, which she gives the history of, as occurring previous to giving the poison to her husband, when she was about to swallow the poison herself, and on two occasions since she has been in the prison.

An examination of the eyes was made at my request by Dr. L. J. Lautenbach, an ophthalmologist who has assisted me in the study of about 600 cases of insanity by this method.

Vascular changes in the deep structures of the eye, as seen by the ophthalmoscope, I have come to regard as a valuable index to similar conditions in the brain.

The following is extracted from Dr. Lautenbach's report to me :

"The eyes indicate congestion, periodic in the sense of

an accentuation of congestion at different times, each of these congestions having causative relation to the deterioration of the optic nerve—shown by the appearance of the nerves and by the contracted fields for both form and color. Of course the inference is obvious that these congestions, not being occasioned in the eyes themselves, are the same as are present in the brain where they have been followed by similar results.”

This I regard as the most positive direct evidence obtained, or obtainable, but it was mostly ruled out at the trial.

Taking the mental and moral measure of this woman as she presents herself without any evidence, one finds it impossible to believe that she has, or ever had, when in her right mind, the force of will to deliberately plan and execute one, still less three murders.

Her nature is kind and affectionate; never vicious, ill-tempered, or resentful even toward those who wish her harm. Above everything else she is a weak woman; one who has drifted with the tide.

Her life has been evil, because evil has been in the direction of the least resistance. In other words she has a brain weak, unstable and yielding to slightest influences, such a brain as, under exciting causes, is easily unbalanced and determines insane acts.

Keeping in mind the dates of her series of crimes—March 20, April 20, May 22—remembering that her menstrual period failed to appear in March, that it failed also in April and again in May, remembering, too, the conditions of her life at this time, we cannot fail to see that a combination of circumstances favorable to the production of insanity was present.

To recapitulate: We have a woman of naturally weak brain which has been subjected to periodic congestions,

or fulness of the blood vessels at the menstrual period, in whom the function abruptly ceases and the periodic vascular fulness thereby fails of its usual relief. She is further dragged down by internal diseases of long standing, and her power of resistance further weakened by a defective heart. Add to this the extraordinary physical and mental strain imposed upon her during those weeks when she had no help either night or day in caring for her sick husband and in providing for the wants of her two little children.

I repeat, that here are all the conditions necessary to the production of insanity, such as have been seen to produce insanity over and over again.

Based upon all these facts, and also upon the evidence as given, my judgment is that Sarah J. Whiteling was in an unnatural mental state over a period of three months and more, and that, periodically with the struggle of nature to re-establish the interrupted function, her mind became unbalanced, to a degree that rendered her incapable of judging between right and wrong, and of properly directing her own actions.

The case of the Commonwealth *vs.* Whiteling came to trial at a time when a wave of indignation against the common practice of insuring the lives of young children was sweeping over the community.

The horror inspired by these unnatural deeds—unnatural most truly—was deepened by the idea which rapidly gained ground that they had been done for money, for the paltry sum obtained by the insurance upon the lives of the victims, and popular clamor demanded the conviction of the wife and mother.

At the present time this idea is still firmly rooted in the public mind, judging from the comments of the newspapers, but it is a most unjust one and wholly without support.

The small sums received were immediately expended in the payment of debts and funeral expenses, and it was in evidence that the undertaker felt called on to check extravagant outlay on these occasions. The policies were not of recent date, and it was in evidence that it was almost the universal custom in the neighborhood where the Whitelings lived to have the children's lives insured.

There was no evidence that she spent a penny for her own pleasure, but, on the contrary, she was doing washing and other work for her support after the death of the last child.

It is right to say here that the Prosecuting Attorney himself told me that he did not regard the insurance money as a motive, but rather her desire to rid herself of her family as encumbrances.

The latter hypothesis I regard as inconsistent with her nature, and with the evidence that she had been a kind and affectionate mother, with all a mother's natural love for her offspring.

Direct evidence of temporary, functional insanity, of a nature to satisfy the legal mind, must always be difficult, if not impossible to produce. In this case the prisoner was peculiarly defenceless, from the fact that she had no living relatives, and there was no one who had been with her and could testify to her exact condition at the times when she committed her first, second and third unnatural crimes.

A woman who kept a store in the neighborhood, the clerk in the drug store where she bought the poison, several women for whom she had washed and sewed, a number of neighbors who had seen her "off and on," the Coroner, a police officer and six doctors—a formidable array of eighteen witnesses—testified in rapid suc-

cession that they had not "seen anything insane in the conduct of the prisoner at the bar." There was really no reason why the Commonwealth should have stopped at eighteen, unless at this point the jury was sufficiently impressed with the *quantity* of the evidence.

Of the six doctors, two were the attending physicians, who gave the certificates of death, both confessedly without experience in mental diseases; one was the prison physician, who had no previous acquaintance with the prisoner; three were experts of acknowledged high standing, of whom two had visited her once, and one three times in prison. Their testimony, as was that of the two experts called by the defence, was kept rigidly within the limits of their own personal observations. Inference, reasoning from premises and analogy have their uses, but are not evidence. The question, "Did you yourself see evidences of insanity in this woman?" was necessarily answered in the negative, since no one has taken the ground that she is now insane, beyond being of low mental grade, or that she had been so since her arrest and imprisonment.

The following extracts from the evidence are taken from stenographic notes of the inquest and trial, kindly loaned me by the District Attorney :

M. E. Pomeroy, a neighbor, at the Coroner's inquest, testified "that Mrs. Whiteling came to her house and told her the bodies had been taken up, and that she expected to be arrested, and that she was laughing when she was telling her about it."

In the evidence of Mrs. Martin, a neighbor, it was developed that the prisoner told her that she would not have Willie examined, post-mortem, "because she had a child opened once and it came to life again."

Mr. Baily, a brother-in law to the prisoner, testified

that he "always had thought the woman flighty in some way ;" also he "took notice *sometimes she could talk sensibly and sometimes she could not.*"

Undertaker Kehr, who buried the three victims, testified that he visited the house about a dozen times ; that the prisoner "acted and talked foolishly ; at times would cry and again would laugh." When we drove up with the wagon to the funeral of Bertha, she was across the street and looked like a wild woman." While helping him to dress Willie for burial, "she would laugh and would talk about getting married, and would get up and cry and then would laugh again." "When I was there I did not think she was a sane woman."

On cross-examination : "The whole tenor of her actions I think indicated that she was not of sound mind. * * * All through I considered her of unsound mind ; I would not swear that she was a crazy woman but I can say she was a woman of unsound mind."

This opinion the witness repeated in different forms over and over again.

The following illustrates a **method** of cross-examination :

By District Attorney—"Now, you say her conduct led you to believe that she was insane. Did you ever see a person under such circumstances before, so as to be able to compare her conduct with that of other people. I mean one having poisoned three people ?"

Ans.—"I never had a case of that kind before."

District Attorney—"Then you really do not know how a person would act under such circumstances ?"

Ans.—"I do not know."

Miss Mathews, the matron of the prison, now in charge of Mrs. Whiteling, who had an experience of

seven years as nurse in a hospital for the insane before occupying her present position, has recently told me that daily observations over a period of months have convinced her that Mrs. Whiteling is an irresponsible being.

I last saw Jane Whiteling in her prison cell, a week ago, March 5. She was in bed, it being near the close of a menstrual flow of five day's duration. Throughout that time and especially on the day preceding my visit the matron told me she had observed a marked alteration in her; a tendency to excitement with alternations of pallor and flushings of the face.

I was forcibly impressed by the more than ordinary want of steadiness in her mental action and by the fact that her memory was not so good as at previous examinations; she herself said: "I don't seem to have any remember." More than ordinarily she failed to grasp any aspect of the situation. She greeted me with the remark: "Oh, I was terrible happy yesterday," but when I asked her why, she could give no satisfactory reason; "it just come to her."

Later, after speaking to her of her responsibility for her crimes, she said: "*I know* I can't be a wicked woman or I couldn't be so happy."

And as I left her in her prison cell I could not help wondering what possible end was to be served; in how much was society to be the safer, the majesty of the law to be vindicated, by killing this simple, ignorant, unfortunate victim of forces which had proved too strong for her feeble powers of resistance.

A case which presents similar features was that of Annie Gaskin, who killed her own infant by cutting its throat, December 27, 1885. She was tried in Philadelphia, acquitted on the ground of insanity at the time of

the commission of the act, and was sent to the hospital at Norristown, where I had her under observation for more than a year.

Annie Gaskin was also of low mental grade, although she had always been able to work for her living, had married and cared for her own household.

She had one sister of feebler grade than herself who was known as "Simple Mattie."

Annie Gaskin had also been subject to "pain in the head and dizziness" at her menstrual periods, and it was at such a time, when under great grief and anxiety following the death of her husband, with extreme poverty confronting herself and her little children, that she took the life of one of them.

She rose at four o'clock in the morning, with her three children sleeping beside her, procured a dull knife and cut the throat of her babe, ten weeks old, making a ragged wound five and a half inches long, extending quite through to the cerebral column—a wound that would seem to require almost inhuman ferocity to inflict with the instrument at her command.

This done she redressed the child in clean clothing, put the bloody garments into a bucket of water and laid herself down to rest.

At six o'clock she went to her sister's, two squares away and told her to "come, for the cat had killed the baby."

There was no evidence at the trial that she had ever been thought insane previous to this act.

In her year or more of hospital life with us she was uniformly gentle, patient and industrious, never ill-tempered or even irritable. For about two days each month she complained of her head and generally spent the time in bed and was quieter than usual; there was never any out-break of violence.

At the end of the time named she was discharged and given into the hands of her friends with the consent of the Court.

I have no record of the examination of her eyes or heart.

In November, 1882, Caroline Metzgar, a German girl, 17½ years old, apparently sound in body and mind, living at service in Philadelphia, arose in the night and made a savage attack with a hatchet upon her mistress and the infant child of the latter—both sleeping in the same room with herself.

Neither of the victims died, but for our purpose the significance of the deed is the same.

There was no motive for the crime, for she had been on exceptionally friendly terms with her mistress, as evidenced by the latter's asking the girl to sleep in her room—she being alone and nervous.

No attempt was made to conceal the fact. She was arrested some time later in bed, still wearing the clothes stained with the blood of her victims.

It was difficult to arouse any sympathy at the time for this girl, who seemed both stupid and sullen.

I have not been able to get the notes of the trial, but it seems to me rather remarkable that she was acquitted on the ground of insanity.

She came to the Norristown Hospital in June, 1883.

Careful inquiry of her mother developed the fact that her first, and, up to that time, only menstrual period had occurred six months before this deed. That periodically since that occurrence she had been restless and unlike herself, sometimes getting up at night to walk.

On examination, she was found to be suffering from a flexion of the uterus. We found that at each periodical struggle of nature to establish the function, she became

melancholy and restless, but there was never any attempt at violence.

Retinal congestion in both eyes was found by ophthalmoscopic examination. I have no record of examination of the heart.

Under the influence of local mechanical treatment, the uterus was restored to proper position, gradually her menstrual periods were regularly established, and she became altogether a different girl, one whose intelligence, thorough honesty and unfailing good nature won the affection and confidence of all who knew her.

She never seemed to have any remembrance of that one act of violence.

Upon proper presentation of the facts to the Court, she was discharged after thirteen months.

She has since married, and I do not doubt that she will remain for the rest of her life a worthy member of society.

Now, what is to be the conclusion of this whole matter? That I will not attempt to answer.

These observations of my own have been offered as a contribution toward the work of the committee appointed by this society to investigate the subject of "Insanity as a result of sexual causes," and with the hope of inciting a much wider circle of similar investigations.

I would have no woman excused from the consequences of her acts merely because she is a woman.

I would not have even insane women always pardoned for their offences, lest there get abroad a spirit, well illustrated by a former insane patient of my own, who once said to me: "*Doctor, I can do anything I please: you know God never sends crazy people to hell.*"

This same woman showed considerable power of self-control when the necessity for it presented itself.

I have a wholesome respect for a public sentiment which looks with fear and doubt upon a woman whose brain has once shown itself capable of reversing the highest laws of her being, and of transforming, for the time, a gentle, loving woman into a blood-thirsty monster, often seeking the most revolting means of accomplishing such deeds as I have recounted to you to-night.

It should be made plain that that brain has been subjected to overwhelming forces, assailing its integrity, such as, in all human probability, will not again present themselves, and from the effects of which it has entirely recovered, before I would have such a woman go free.

So long as there is a doubt, society should have the benefit of that doubt.

And for the unfortunate subject you may lock her within the walls of an asylum, in a prison-cell if you must—anywhere—but you need not kill her.

“Not guilty by reason of insanity” should not mean immediate freedom from restraint; freedom perhaps to go and be again insane and again to commit crime.

Nor should it mean, as it does in my native State, Massachusetts, a life sentence to a lunatic asylum for one who has once been insane, and by reason of insanity has taken a life.

Such a practical denial of the possibility of recovery from disease of the brain is both cowardly and unscientific.

May there not be found some middle ground, at once safe and humane, where every reasonable doubt, whether in the interests of the safety of society, on the one hand, or in defence of the sacred rights of the individual, on the other, may have its due consideration and weight?

I submit this question to you.

EDITORIAL.

THE STATE BOARD OF CHARITIES.

The important portion of the annual report of this Board relates to the state and county asylums for the insane. This report shows a bad condition of things in many of the county institutions, both in care and treatment of the insane, the abuse of mechanical restraint and a general disposition to disregard the advice of the Board, by the officials in charge.

The theory upon which State Boards of Charities of this character were organized was, that the members should be of such recognized public position and character as to command the respect and the confidence of the people of the State. Their duties being that of visitation, purely advisory, would have little influence with superintendents or boards of institutions without both were satisfied of their ability to properly advise.

It is idle to attempt to conceal what the report shows conclusively, that the present State Board of Charities does not command the respect of superintendents of asylums, or the boards that control them. With perhaps four to five exceptions, unknown and obscure persons have been selected for partisan and political reasons upon this Board.

There are but a few of its members who have any practical knowledge of the subjects upon which they are required to examine and advise.

They send one or more of their members once in a year to examine an institution.

They frequently go in the absence of the medical man in charge. They stay two or three hours, and they print their impressions as a report to the Legislature.

There is not a superintendent of an asylum in the State that regards the opinion of the Board upon the question of insanity, or the care and treatment of the insane, as of any especial importance or value.

There is hardly a board of managers of any insane asylum, or of any of the great charities, that are not in every respect far the superiors of the State Board as at present organized, in knowledge of the subject matter of, and needs of their several institutions.

Governor Hill, who, while Lieutenant-Governor was on this Board and familiar with its workings, has seen that its usefulness was gone and recently recommended its abolition, in his message to the Legislature.

The President of the Board, Mr. W. P. Letchworth, is a gentleman well qualified for his position, as is Mr. Oscar Craig, of Rochester, and a few of the other members. The members for the City of New York are not at all competent to meet the necessities of the great institutions of that city, and we feel inclined to the opinion that without a thorough reconstruction of this Board it will cease to be of the slightest importance in influencing the Legislature, or the administration of the great charities of the State, and more especially those of the city of New York.

We deeply regret this. It is not the fault of the system, but of the carelessness of the Governors prior to Governors Cleveland and Hill in selecting incumbents.

The Earl of Shaftesbury, who for fifty years sat as Chairman of the English Lunacy Committee, and the Board over which he presided, had the full confidence of every Board and superintendent in Great Britain, and

deservedly. We need either a change in the personale of this Board or the plan suggested by the Governor, its abolition.

A BOARD OF LUNACY COMMISSIONERS.

A bill is pending before the present Legislature of New York for the creation of a Board of Lunacy Commissioners, composed of several members, the chairman of which shall be a physician at a salary of \$5,000, one a lawyer at a less salary \$3,000.

The Board to have advisory powers only, and holding as a body about the insignificant position as to power and responsibility, as the present State Lunacy Commissioner, or the present State Board of Charities.

While all must agree that a Board of Lunacy Commissioners with powers analagous to those of the English Lunacy Board, properly organized, would be of enormous consequence and importance, to the proper administration of the various institutions for the insane of the State, it is important when such a Board is constituted to commence right.

1. A physician should not be chairman of it. It should be a layman, and, if possible, a lawyer of position, who should command a salary equal to that, and secure the ability equal to that, of a judge of the Supreme Court, as it would be in every way as important an office, and at a suitable salary.

2. A medical man should be upon it who would command a salary of at least \$5,000, selected for his thorough acquaintance with and fitness for the position, and of such standing that such a salary would be small for the service rather than large, and both these gentlemen should be required to give their whole time and attention to the duties of the office.

3. The other members of the Board should at least be five in number, and should be selected from citizens of high character, who would serve without salary, and whose traveling expenses and all disbursements should be paid by the State.

4. A secretary at a salary of \$2,500, to be chosen by the Board.

This Board should have all the powers exercised by the English Lunacy Board, over the management of institutions, discharge of inmates, and should have power to suspend any superintendent for cause, or discharge any inmate improperly committed or retained in any public or private institution.

They should be required by law to visit every institution at least four times in each year, and every insane person in the State should be made the subject of especial and personal visitation at least three times in each year by some one member of the Board, so as to give relief in any case, and to have personal knowledge of each case

A serious defect of our present system is that there is no legal or official power over the superintendents of asylums. They need and should insist upon this supervision in their own interest.

The power of the Board, and its orders as to treatment, discharge or internal administration, should be followed at once by legal authorization.

It may be impossible to obtain a proper law at this session. It may be thought well to obtain such a Board, without power now, and look to future legislation for authority and power. We think *now* is the time to attend to both these most important matters. We know of no Board of Lunacy Commission that is presided over by a physician. He would be more important in advis-

ing the Board in medical matters. His profession would rather disqualify him to act as President of the Board.

If the Legislature will pass such a law Governor Hill can safely be entrusted with the power of making a Lunacy Board that will command the confidence and support of the people of the State, and of Superintendents and Board of Managers of institutions.

DR. SAMUEL WESLEY SMITH.

We must compliment the State Commissioner in Lunacy for the promptness with which he sends his report to the press. It only purports to give data since May 24, 1888, the day he assumed the duties of the office. He apologizes for the residue of the year, by the remarkable statement "that he received no records or reports from the outgoing commissioner of work performed and recommendations made by him during the past fiscal year."

The report is terse, vigorous, and shows energy, zeal, good work and practical common sense in its recommendations.

The recommendations of changes in the law are such as the commissioner shows are necessary for the service, viz.:

1. A commission for the revision and codification of the lunacy statutes of the State.
2. An earlier date for the reports from asylums to commissioner on or before October 15 in each year, to enable him to complete his report earlier to the Legislature.
3. Enlarging the powers of asylum boards as to discharge and parole of patients.
4. As to committment and transfer of female insane.

5. As to discharge and transfer of the insane from asylums.

6. As to judicial disposal of insane persons charged with crime.

7. State care and county care of insane.

8. Classification of the insane by legally defining what are *acute* and what are *chronic* insane.

These amendments we concur in as wise, but it is a patch work business to so amend the existing statutes, as to make anything like such a whole, as we need and should have.

The whole edifice of the lunacy law needs reconstruction.

The powers of the commissioner in lunacy should be greatly enlarged until a Board of Lunacy Commissioners can be appointed with full, and not merely advisory powers.

The change of WILLIAM LORD PALMER from Auburn to Middletown was a most commendable action, and the report shows that great injustice has been done the county asylums, notably in the case of the Wayne County Asylum at Lyons, N. Y.

PERSONAL.

MR. CLARK BELL was elected an Honorary Member of the Society of Psychiatry of the Netherlands at the November session, 1888.

PROF. BENJ. BALL of Paris has been elected Vice-President of the Societie Medico Psychologiques of Paris.

PROF. BROUARDEL, who was elected an Honorary Member of the Medico-Legal Society at the March session, has been elected President of the Medico-Legal Society of France.

SIR JOHN C. ALLEN, Chief Justice of New Brunswick ;

Chief Justice Bermudes, of Louisiana ; Judge W. S. Ladd, of the Supreme Court of New Hampshire ; Judge A. L. Palmer, of the Supreme Court of New Brunswick ; Judge Locke E. Houston, of the First Judicial District of Mississippi ; Judge Wm. H. Francis, of Dakota ; Judge Westcot, of Philadelphia, and Judge Gumley, of Louisiana, are among the recently elected active members of the Medico-Legal Society from the Bench.

Among the superintendents of asylums who have recently united with the Medico-Legal Society since the announcement made in the June number of this journal, when the names of twenty-six then elected since the preceding January meeting were announced, we take pride and pleasure in announcing :

Wm. M. Knapp, M.D., Supt. Nebraska State Asylum ; A. B. Richardson, Supt. Athens Insane Asylum, Ohio ; J. H. Callender, M.D., Supt. Central Tennessee Hospital for Insane ; G. F. M. Bond, M.D., Supt. Ward's Island Asylum, New York City ; S. Bishop, M.D., Supt. Nevada Insane Asylum ; R. E. Smith, M.D., Supt. Missouri State Asylum, St. Joseph ; John W. Waughop, M.D., Supt. Insane Asylum, W. T. ; Daniel Clark, M.D., Supt. Insane Asylum, Toronto, Canada ; J. T. Steeves, M.D., Supt. Insane Asylum, Fredericton, N.B. ; C. H. Wallace, M.D., Asst. Physician St. Joseph's Asylum, Mo. ; Samuel Wesley Smith, M.D., State Commissioner in Lunacy of New York ; W. F. Drewry, M.D., Asst. Physician Virginia State Asylum, Petersburg ; Selden H. Talcott, M.D., Supt. New York State Asylum, Middletown ; L. G. Perkins, M.D., Supt. Louisiana State Asylum, Jackson ; Connolly Norman, M.D., Supt. Richmond District Asylum, Dublin, Ireland ; C. Chase Wiley, M.D., Asst. Supt. Pennsylvania Asylum at Pittsburgh ; Elon N. Carpenter, M.D., Supt. Asylum, Amityville, N. Y., and among professors :

Prof. Millen Coughtrey, of Otago University, New Zealand ; Prof. Frank S. Billings, Nebraska State University ; W. A. Hall, Professor Medical Jurisprudence, Minneapolis, Minn. ; Prof. Arthur P. Luff, of St. Mary's Hospital College, London ; Prof. Victor C. Vaughn, of Ann Arbor, Mich.

PRIZES FOR ESSAYS ON MEDICO-LEGAL SUBJECTS.

THE MEDICO-LEGAL SOCIETY of New York announces the following prizes for original essays on any subject within the domain of medical jurisprudence or Forensic Medicine :

1. For the best essay—ONE HUNDRED DOLLARS, to be known as the CLARK BELL PRIZE.
2. For the second best essay—SEVENTY-FIVE DOLLARS.
3. For the third best essay—FIFTY DOLLARS.

The prizes to be awarded by a commission, to be named by the President of the Society, which will be hereafter announced.

Competition will be limited to active, honorary and corresponding members of the Society at the time the award is made.

It is intended to make these prizes open to all students of Forensic Medicine throughout the world, as all competitors may apply for membership in the Society, which now has active members in most of the American States, in Canada, and in many foreign countries.

All details of the award will be determined by the Executive Committee of the Medico-Legal Society of New York.

The papers must be sent to the President of the Medico-Legal Society of New York, on or before November 1, 1889, or deposited in the Post Office, where the competitor resides, on or before that day.

The name of the author of any paper will not be communicated to the Committee awarding the prizes.

All persons desiring to compete for these prizes will please forward their names and address to the President or Secretary of the Medico-Legal Society of New York.

In case the essay is written in a foreign tongue, it should be accompanied by a translation into the English language.

The Committee of Award to consider the merits of each essay, independent of their opinions of the author's views.

It is hoped that all our members, whether active, honorary or corresponding, will take an interest in this effort to stimulate scientific inquiry and research in questions relating to medical jurisprudence.

Scientific societies in all countries are invited to lay this announcement before their members, and the co-operation of the legal, medical and public press is respectfully solicited in bringing the subject to public attention.

CLARK BELL, *President*,
57 Broadway, N. Y.
ALBERT BACH, *Secretary*,
140 Nassau St., N. Y.

PRIZE ESSAYS.

It has been found impossible to publish the prize essays in book form at as low a price as named in the December issue.

To publish some of the essays awarded prizes, those which received honorable mention by the Committee, and some of the other competing papers thought worthy of a place in such a volume, will require a much larger outlay than was at first supposed.

One hundred and fifty copies have been already subscribed for. If one hundred additional copies can be obtained the volume will be published at \$1.00 in cloth, and 60 cents in paper, and delivered to subscribers in the order in which the subscriptions are received.

AMERICAN INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE.

THE MEDICO-LEGAL SOCIETY of New York has decided to hold, under its auspices, an INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE at which representatives from all countries are invited to attend and contribute papers.

The immense progress made in this century in the sciences of biology, neurology, psychiatry physiology, psychology and toxicology have enhanced our knowledge of the functions of brain, nervous organization, and elevated medico-legal science to a higher rank than it ever occupied before. The application of justice is governed by a higher sense of humanity, with our increased knowledge of the physical organization of the human mind. The conviction has therefore gained ground, that medicine and jurisprudence must combine closer for a clearer definition, and the better understanding of the principles that are rooted in both branches of learning, in the exercise of functions which require practical application in the government of society. This is the special field of medico-legal science, and it calls for the most intimate relationship between the faculties of medicine and of law. Eminent men in both hemispheres have rendered great service in the elucidation of the great principles underlying medico-legal science. In most of the European countries forensic medicine is taught by great specialists attached to the universities, and the same is done in

some of our own colleges; nevertheless, there is no uniform practice in the application of these principles to the administration of justice. The courts in Germany obtain the opinions of experts officially attached there, which are, however, often disregarded, and neither in this country nor in Europe are the courts bound by the professional opinions of the medical experts. The divergence of views must be greatly ascribed to the obscurity which still surrounds certain scientific facts outside of the medical profession, the necessary effect of the absence of intimate and close relationship between the faculties of law and medicine.

To bring about a nearer approach of the two learned professions in the interest of medico-legal science and a more uniform application of its principles throughout the civilized world, our Society has determined to invite the votaries of medico-legal science, the men who have attained eminence in the professions of medicine and law in any part of the world, whose voice will be heard with that respect which is accorded to authority, to meet at an international congress to be held in the city of New York, on the first Tuesday in June, 1889, at such place as will be determined.

In issuing this call we voice the sentiments of leading jurists and alienists, of prominent members of the bar, and the medical faculty of our whole country, and we may promise to all the gentlemen who will attend a cordial welcome by our citizens and members.

A congress like this will advance mightily, the cause of justice and humanity, and will pave the way for a clearer definition of the principles which should govern the administration of justice in our enlightened age. The intercourse between men eminent in their profession, the exchange of views between them, the treat-

ment and discussions of questions that form an integral part of both law and medicine, by those whose voices are recognized as the leaders of science, will form another link in the universality of all true science.

The Congress will hold a session of four days. Members of the Medico-Legal Society will entertain as guests all foreign visitors—and arrangements will be made for reduced rates of ocean and railway travel for those who attend from a distance.

The leading societies, home and foreign, who are pursuing kindred studies, are invited to send delegates.

The General Committee of Arrangements is herewith announced.

These who have been placed upon the International Committee of Arrangements for each State, territory or country will please at once act as our representative in the State or Country where they reside, and are authorized to obtain titles of papers and names of those who will take part in the Congress, either by attending or contributing papers.

To assist in defraying the expenses of the Congress, a roll will be made of those who desire to become members of the Congress, and contribute a fee of \$3, which will entitle them to a copy of the Bulletin free. Members of the Society who are unable to attend, are urged to enroll as members to aid in defraying expenses, and relieve the Society from this burden.

This should be remitted to Mr. E. W. Chamberlain, Treasurer, No. 120 Broadway, who will keep it as a separate and special fund for the expenses of the Congress.

Members of the Society, residing in the various states of the Union, or the CANADAS, will be entertained by the resident members, on the same footing as foreign delegates or invited guests.

All Active, Honorary or Corresponding members who will contribute papers, to be read at this Congress, will please forward their names and the title of their papers to the Corresponding Secretary or to the President of the Society, at No. 57 Broadway, N. Y. City.

Officers of scientific bodies, in sympathy with Medico-Legal studies, will please lay this announcement before the members of their societies.

All students of Forensic Medicine or its kindred and allied sciences, are invited to attend and to contribute papers to be read. We request you to inform us of your decision and of the subject which you may eventually desire to speak upon or the treatise which you may submit. The sooner you can communicate your pleasure to us, the more you will facilitate the labors of the committee who are charged with the necessary preparations for the work.

Please advise the undersigned if you will contribute a paper to this Congress if unable to be present. A bulletin of the transactions will be published, at a cost of \$2.00 in cloth or \$1.50 in paper. Members or others desiring to secure the same will please remit to the president of the society.

CLARK BELL,
President.

ALBERT BACH,
Secretary.

MORITZ ELLINGER,
Cor. Secretary.

New York, March, 1889.

COMMITTEE ON INTERNATIONAL CONGRESS:

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TITLES OF PAPERS FOR THE JUNE INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE IN NEW YORK.

We publish the titles of the papers, already promised:

“Criminal Responsibility in Narco-Mania,” by Norman Kerr, M.D., of London; “Medical Expertism in the Old World,” by A. Wood Renton, Esq., of the London bar; “The Criminal Insane; Their Legal Responsibility, Trial and Custody,” by Hon. H. M. Somerville, Justice of the Supreme Court of Alabama; “Feigned Insanity,” by Norman Connolly, M.D., Medical Superintendent Richmond District Lunatic Asylum, Dublin; “Expert Testimony in Homicide Cases,” by Judge Wm. H. Francis, of Bismarck, Dakota; “Live Birth in Its Medico-Legal Relations,” by Prof. John J. Reese, of Pennsylvania; “The True Test of Legal Responsibility of the Insane,” by Hon. M. W. Montgomery, of the Supreme Court at Washington, District of Columbia; “Some Forensic Features of Psychology,” by Prof. Edward Payson Thwing, M.D., of Brooklyn, N.Y.; “A Study of the Skulls of Criminals,” by Frederick Peterson, M.D., of New York; “Mental Epidemics,” by Moritz Ellinger, of New York; “The Criminal Insane,” by Samuel Wesley Smith, New York State Commissioner in Lunacy; “The Legal Aspects of Hypnotism,” by Benno Loewy, Esq., of the New York bar; “Alcoholic Trance in Criminal Cases,” by T. D. Crothers, M.D., Superintendent Walnut Lodge, Connecticut; “Power to Transmit and Record Language,” by R. S. Guernsey, Esq., New York bar; “License Laws,” by Carl H. Horsch, M.D., Dover, New Hampshire; “Volitional Insanity; an Inquiry into the Relation of Defective Inhibition to Criminal Responsibility,” by Austin Abbott, Esq.; “Change of Character Criterion in Mental Aberration before the Law,” by C. H. Hughes, M.D., of St. Louis; “Freedom of the Will

in Reference to Medecina Forensis," by C. F. Linderne ; "Life Insurance," by Daniel, of Fredricton, N. B. ; "A Medico-Legal View of Electrical Distribution," by Harold P. Brown, Esq., of New York ; "The Abolition of the Corcner in Mass.," by Th. H. Tyndale, Esq., of Boston.

ILLUSTRATED EDITION OF SERIES NO. 1 MEDICO-LEGAL PAPERS.

To the Members of the Medico-Legal Society and the Students of Medical Jurisprudence throughout the World.

It has been decided to publish a new edition of Series No. 1 of Medico-Legal Papers, the first edition of which is wholly exhausted, and thus place within the reach of our members, and all lovers of the science, a complete series of all the valuable papers read before the Medico-Legal Society from its foundation in June, 1867, to the founding of the Medico-Legal Journal in June, 1883. The complete series will be Nos. 1, 2, 3, 4 and 5. No. 4 is now in press, about half completed, and No. 5 will follow.

The volume will contain upward of 600 pp., and will be illustrated with portraits of some of the prominent members, officials and authors of papers, and distinguished Medico-Legal Jurists, with short sketches of each.

The expense of such an undertaking is too great to be borne by the Society in whole, and it can only be done by a general subscription on the part of members for the work.

It has been decided to attempt it at a cost of \$3.00 in muslin and \$2.25 in paper.

The edition will be printed on fine heavy paper, and will be supplied to subscribers in the order in which their subscriptions are received. The first 500 volumes will be seperately numbered. Please return your subscription to the Medico-Legal Journal, or to Mr. Clark Bell, at No. 57 Broadway, New York City, as early as possible.

New York, March 1, 1889.

This notice was sent to members of the Society on March 1st, 1889. The following subscriptions have already been made at date of going to press to the illustrated editions of Series No. 1:

In cloth: No. 1, Dr. W. A. Ward, Conneaut, Ohio; No. 2, Jas. M. Lyddy, Esq., New York City; No. 3, E. W. Chamberlain, Esq., New York City; Nos. 4 to 14, Clark Bell, Esq., New York City (paid); No. 15, Dr. W. W. Godding, Washington, D. C. (paid); No. 16, Dr.

Chas. H. Shepard, Brooklyn; No. 17, Dr. F. H. Clark, Lexington, Ky. (paid); No. 18, Albert Bach, New York; No. 19, C. H. Blackburn, Cincinnati, Ohio (paid); No. 20, Benno Loewy, Esq., New York; No. 21, Dr. Vanderveer, Albany (paid); No. 22, M. Ellinger, New York; No. 23, Dr. J. H. Southall, Arkansas (paid); No. 24, Dr. I. L. Peet, New York; No. 25, Dr. J. Mount Bleyer, New York; No. 26, Dr. W. G. Stevenson, Poughkeepsie.

In paper: No. 1, N. C. Moak, Esq., Albany; No. 2 to 51 inclusive, The Medico-Legal Society of New York.

REVISION OF LUNACY LAWS.

The following resolution is now before the Legislature of New York, on recommendation of the State Commissioner in Lunacy :

Whereas the State Commissioner in Lunacy, in his report to the Legislature, has called attention to the necessity of revising the laws relating to the insane, and

Whereas such a revision embodies a field of amendment touching both our poor laws and the Code of Criminal Procedure, therefore

Resolved, That the Governor be authorized, by and with the consent of the Senate, the Assembly concurring, to appoint three persons as a special commission to revise and codify all laws relating to the insane in this State, and to report such codification to the Legislature on or before the twentieth day of January, eighteen hundred and ninety.

Resolved, That the Attorney-General and State Commissioner in Lunacy and President of the State Board of Charities be added to this Commission, as ex-officio members thereof, to serve without compensation.

The sum of six thousand (\$6,000.00) dollars, or as much thereof as may be necessary, is hereby appropriated to pay the salaries and defray the necessary expenses of such commission.

We have steadily favored such action, and hope this resolution will prevail.

TRANSACTIONS.

DISCUSSION UPON JUDICIAL EXECUTIONS BY ELECTRICITY.

December meeting, 1888.

MR. CLARK BELL, President: The society is desirous of hearing from electricians who are understood to oppose the plan suggested by the committee. This is a public question of the highest intent, and, outside of the subject, I am glad to see electricians here, and I have extended in the name of the society a general invitation to the officers and members of the Electric Club, and to the Society of Electrical Engineers to be present and take part in the discussion.

I will call on Mr. Moses to give the Society the benefit of his views.

MR. OTTO A. MOSES: The want of accurate observation of the conditions necessary to produce instantaneous death would preclude my offering an opinion as to the best methods of executing criminals by electricity. Since the resistance of the human body varies enormously at times, according to the mental and physical state of the individual, it would not be possible to reason, *a priori*, on the effect given quantities of current would produce. Nor was it at all certain what relation of current, electromotive force and resistance were most likely to produce death quickest. When we consider that the varying thickness of the skin, the oily secretions, the perspiration, hair, etc., all tend to make a difference between any two consecutive determinations of resistance, we can put no faith in the superficial methods adopted by the experimenters who

so rapidly decided that an alternating electric current was better for the purpose than a continuous one. Nor did I see any difference in the effects in the two methods except that a continuous current was more likely to cause *certain* death by its superior electrolytic action—in which case the blood would be decomposed more effectually from the passage of the current constantly in one direction.

Again, I was violently opposed to the prostitution of so useful an agent as electricity to such vile purpose as the one proposed. By association of ideas (a powerful instrument in education) there would be a horror against its employment as a servant in the household ; and thus those who were trying to apply it to public executions were delaying (though not preventing) its final introduction into our homes as a substitute for gas and steam power.

MR. RALPH W. POPE: I do not feel prepared to discuss this subject in the manner it warrants. As my friend, Dr. Moses, remarks, I feel that we are placed in a very peculiar position in being called upon as electricians at the eleventh hour, after it has been decided to put into operation this law, and to advise the great State of New York how to do it. We feel as if this matter was of so much importance to electricians generally, it would have been more proper to have called upon us for our opinions at an earlier stage in the proceedings. In glancing over the report of the committee, I find this clause: "The commission appointed by law to examine into various methods of causing death, which should be more humane than hanging, decided upon electricity." This shows it was the intention to use the most humane measures possible to execute criminals.

Now, I do not think, and never have thought that

our practice was humane in appointing a certain day and hour in which a criminal has to die. It is one of those mysterious dispensations of Providence that we are placed upon this earth, and that none of us know the time of death; it may come to-night; it may come to-morrow; but none of us can tell when. Suppose that it was fixed for everyone of us, what would our lives become? They would be one continual round of misery. In this respect, we might turn to France and learn from them something about a more humane method so far as fixing the day is concerned, where the criminal is awakened a half hour before execution; he does not know the day fixed, and but a few minutes elapse between the hour he is awakened and the time he is executed. I believe the new law has a similar provision. Unfortunately I have not given it attention. The idea is to make it more humane, and if I was called upon personally to state my preference to make it as like natural death as possible, I should suggest gas—not water gas—I should not want to die by that if I was awake and could smell—but there are plenty of gases which if turned into the cell of a criminal on any night without his knowing it, he would simply fail to awaken from his natural sleep.

That is one method. It is not for me to teach physicians how to execute criminals. If we may believe all we hear, doctors know how to produce death as well as preserve life, and if we are to die by the hand of the law and it is to be done in the most humane and quiet manner possible, I do not see for my part why this sensational method of executing by electricity was adopted. I have read and followed some of the experiments which have been made upon animals; I have paid some attention to the details and do not think there is any question but what a criminal can be executed by elec-

tricity, but if it is so dangerous and it is such a death dealing agent, I do not see why such care should be taken in pinning him down, when it could be done just as well in the mere act of turning off a light; that is sure death according to some of the statements made. It is said there have been 200 killed by meddling with electric lights. There is one thing about electricity, it never kills but one man at a time; it produces none of those awful disasters like the explosion of a steam boiler in a vessel on the water. Steam locomotives run constantly on the elevated roads; supposing one exploded opposite a station, it would kill many. We are beset on all sides by these dangerous elements, but I do not think it would be wise to adopt any of them as methods of capital punishment. I do not see why a specific system of electricity should be selected to do it any more than that a man should be hanged by a rope made by Wall & Son. I speak as a representative of several companies. I am on friendly terms with them all. But to make an invidious comparison, however innocently, is intended to do harm to certain companies. I have to go and turn on this deadly alternating current certain evenings in a hall, but feel no fear. I think electricity one of the safest elements we have to deal with to-day. It is much safer than gas; we know how to handle it. The only trouble is, that in the stress of competition they use cheap methods. I have said often regarding our electrical companies that they do not use proper wires in New York city and that the practice ought to be reformed. I have no suggestion to make in regard to this method of using electricity. As it has been proved that the electric current can kill a horse, I presume it can kill a man.

F. W. JONES: Having been invited to participate in the discussion of the report submitted by your Com-

mittee on the Execution of Condemned Criminals by the electric current, I will cheerfully give you the results of some experiments which I have just made.

The resistance of the skin and tissues of the human body varies as the potential or pressure of the current used in the measurement. To verify this I placed my Thomson's mirror in a bridge, and had my assistant measure the resistance between my two middle fingers, via my arms, and in a series of four tests, the conditions being kept as uniform as possible, we got the following results:

	<i>Ohms.</i>
No. 1 test, with one cell of battery.....	80,000
No. 1 test, with ten cells of battery.....	37,000
Second test, one cell of battery.....	31,000
Second test, ten cells of battery.....	24,500
Third test, one cell of battery.....	30,500
Third test, ten cells of battery.....	21,500
Fourth test, ten cells of battery.....	17,000
Fourth test, one cell of battery.....	21,000
Fourth test, ten cells of battery.....	17,000

These tests were made at one sitting, and the change or decrease in resistance was probably due to the epidermis of my fingers becoming more moistened by the sulphate of zinc solution which I used between them and the electrodes; also, perhaps, to a slight unconscious variation of pressure. This shows a variation of only ten volts to one. Of course I could not stand to have my measure taken with 100 or 1,000 volts pressure through my body, and if the drop was from 21,000 to 17,000 ohms, with an increase of nine volts, what would it have been with an increase of 999 volts? The report says: "There can be no doubt that one electrode should be in contact with the head; the other might be placed upon any portion of the body, but there are obvious reasons why the neighborhood of the spinal cord would be more advantageous." It is well known that mother na-

ture has admirably protected the brain of man, as also that of many other of his fellow-creatures, with a skull or bony case containing the seat of all the organs of sense, and this case forms one coherent mass, no openings or foramens existing much higher up than the auditory meatus, all the openings being near the base of the dome. Now, bone when dry is a non-conductor of electricity, and in the case of the parietal bones cannot become good conductors. Hair is also a non-conductor, as well as the epidermis, which, being very porous, allows moisture to pass through, thus establishing a way for the electric currents to reach the dermis, and finally the fluids and tissues of the body at such points as may be directly included between the electrodes, one applied at the apex and the other at the vertebræ.

It is easy to see that the greater part of the current applied between these points would be resisted by the skull, and would flow around outside through the moisture caused by perspiration, and also under the epidermis through the blood vessels and tissues enveloping the skull, and any fatal effect would arise from a shock similar to a blow, and from a reflex action on the spinal cord through the magnum foramen. To verify this my assistant made several measurements of me between the points indicated, and also between a point near the atlas vertebræ in the back of the neck and a point on the body in front, between the fifth and sixth ribs. Calling from the apex of the skull to the nape of the neck, A, B, and from the nape of the neck to the ribs, the results were as follows :

	<i>Ohms.</i>
A, B, first test, 2 volts.....	31,000
B, C, first test, two volts.....	26,000
A, B, second test, 5 volts.....	11,000
B, C, second test, 5 volts.....	8,100
A, B, third test, 5 volts....	10,000

	<i>Ohms.</i>
B, C, third test, 5 volts.....	8,100
A, B, fourth test, 5 volts.....	4,500
B, C, fourth test, 5 volts.....	3,200

As the direct distance between A and B is but one third that between B and C, it makes the figures given comparative by dividing the measurements of B to C by three, thus, A to B, 31,000; B to C, 8,700. Second test: A to B, 11,000; B to C, 2,700. Third test: A to B, 10,000; B to C, 2,700. Fourth test: A to B, 4,500; B to C, 1,070. These tests seem to indicate that the resistance of the head is proportionately four times greater than the neck and trunk, showing that the bones of the skull must very greatly resist the flow of the current.

If an electric current of suitable pressure be applied at a point near the atlas vertebræ at the nape of the neck, and another at a point in front, near the ensiform cartilage, or a little to the left, it will positively produce instantaneous and undoubtedly painless death. The current at point B will act in a reflex manner through the magnum foramen on the entire brain and will also be directly conveyed, according to the well known laws of conduction and resistance, through every nerve and muscle leading from the brain to the vital organs, and they are all included between the two points.

I do not share with my friend, Dr. Moses, the fear that the adoption of any particular class of electric machine or current will bring upon it public distrust or odium any more than that the use of rope in hangings would render clothes lines objectionable. The public must be protected from dangerous currents by similar laws and methods of inspection by public officers as prevail in the case of steam boilers and other dangerous agents. More intelligent experiments should be made than those re-

cited in the report to determine the character, quantity and potential of the current best adapted for this disagreeable purpose, decreed by law to be for the public weal.

PROF. C. A. DOREMUS: I was once requested by the Society for the Prevention of Cruelty to Animals to witness some experiments of the execution of dogs which would replace the drowning method now practiced. The dogs were put in a tank with what is commonly known as carbonic acid gas and were removed after half an hour dead, transferred to the dump carts, but to the astonishment of the drivers, revived on the way to the East River. The duty of the committee appointed by the society was not to ascertain what particular form of dynamo was necessary to deal with in order to inflict the death penalty, but to ascertain what strength of current might be used to kill with certainty. We have had the question brought up whether a person might revive after the shock of the alternating current and not revive after the continuous. There should be absolutely no doubt that the operator is dealing with a current so much greater than man can stand that he is as certain of executing the criminal as the hangman is, who knows that the rope is in a proper condition and that the noose will not slip when he is about to hang a man. The current ought at least to be 3,000 volts ; the dynamos should supply a current between 3,000 and 15,000 volts. We would not do away with gas in hotels or in our houses, because people will blow out the gas. We cannot afford to do away with electricity in our houses because it appears to be the best method of causing instantaneous death, and the question is not whether this society is recommending one or the other system, but which one is the best. The point is to decide upon a current of such strength that the

moment it is received by the criminal he is put out of his earthly existence. My friend Dr. Biggs may, perhaps, throw more light upon the question, since he has had the opportunity of making examinations of the bodies of several killed by the electrical current.

SCHUYLER S. WHEELER: Mr. President, I arise to say something only because I think that one or two statements that have been made here will be somewhat misleading to a general audience. The question has been asked why the alternating current was used in the experiments on dogs. And in connection with this, it has been stated here this evening that the selection of the current to be used was affected by the interests of several commercial companies. I do not deny that that is so. I think this probably true. But I am satisfied that the alternating current causes death more quickly than the continuous. During the experiments at Columbia College I saw one dog tested by various currents. The poor dog was tortured most unmercifully with continuous currents of various pressure up to twelve hundred (1,200) units, but without causing death. Finally the operator asked the audience if they had had enough of it, to which the reply was very emphatically in the affirmative and accompanied with loud requests from all parts of the room to use something which would be sure to kill the dog at once, and put him out of misery. The operator, then, to relieve the audience and the dog, turned on an alternating current having a pressure of about three hundred (300) units or only one quarter of the pressure of the continuous current which did not kill. The dog was killed by this alternating current, instantly and without suffering. Now if the alternating current causes death painlessly, as was shown on this occasion, and the continuous current does not, although of four

times greater pressure, that is a sufficient reason for recommending it for this purpose. I attended the experiments as a doubter, not approving of the methods that were used, nor of anything else. But I became convinced that I ought not to be so sweeping in my disapproval as to ignore the probable demonstration of the greater effectiveness of the alternating current in causing death.

As to the uncertainty with the use of electricity, these experiments show that the proper amount of alternating current will kill instantly.

In regard to the objection which has been raised by gentlemen who are interested in the industrial use of electricity, that its use for the execution of criminals would have a depressing effect upon its use for other purposes. I cannot see why this agent should not be as well able to stand the burden of this office as any thing else. Rope has been used for hanging men without making us dislike to use it for clothes lines or window cords; steel has been used for executions without causing objections to its other uses. Why should this cry be especially reserved for electricity?

Referring again to the claim that partisan motives have been the leading factor in carrying on the experiments on which your report is founded, I do not think that a matter of this sort, upon which technical discussion is invited, ought to be confused, during the discussion, by the introduction of extended remarks on the motives which lead to the original experiments. It may be that the demonstrations were apparently started for a commercial purpose, that of inducing the prohibition of the use of high pressure alternating currents in New York City. It was in this connection that I attended the first experiments at Columbia College, with some of

the members of the Board of Electrical Control. The commissioners were so disgusted with the exhibition, that they retired and advised me to withdraw. But being anxious to secure the results of the tests I stayed with great reluctance, and reached the conclusion stated above.

As to the details of the method proposed, for electrical excutions, I do not see that anything can be added except that perhaps the chair is to be preferred to the table because less suggestive of anything unusual. I do not intend these remarks as a reflection upon anybody. I simply want to manifest my disapproval of the introduction in this place of too much partisan discussion not bearing upon the merits of the report.

DR. WHEELER: I want to say that I heartily agree with Mr. Jones in his remarks, except in regard to the effect of passing the current through any part of the body other than the head. It is probably true, as he says, that the head presents greater resistance to the passage of the current than any other part of the body, but it is very desirable to concentrate the effect of the current upon the head for the purpose of destroying consciousness without producing muscular actions. If the current is passed through any other part of the body the effects upon the muscles are direct and powerful, producing tremendous contractions, "titantic contraction" I believe they are called by the profession, which of course are very disagreeable and to be avoided, while the effect upon the consciousness would be only indirect.

MR. GEO. M. PHELPS (called upon by the chairman): I have only just entered the room and so have not heard what has gone before; but I judge from the tenor of Dr. Wheeler's remarks that you are now on the subject of capital punishment by electricity. Although I am in-

terested and chiefly occupied in electrical matters, I have taken but small interest in the subject now before you. I have regretted that the medical fraternity was not further consulted in the matter; if they had been they would probably have been able to advise some other and simpler means than electricity. The use of the electric current seems to me a rather sensational manner of despatching criminals. I have no criticism to offer on the method of applying electricity suggested in the report of the committee.

So far as I have any opinion on the subject I regard the whole proposition as sensational.

MEDICO-LEGAL SOCIETY—JANUARY SESSION.

PRESIDENCY OF CLARK BELL, ESQ.

January 8th, 1889.—The Society met at Hotel Buckingham. President Clark Bell in the chair. The minutes of the December meeting were read and approved. In the absence of Secretary Bach, Dr. Frank H. Ingram acted as Secretary. The following persons were elected active members, on the recommendation of the Executive Committee :

Dr. Henry S. Stark, New York City, proposed by C. A. Doremus ; Dr. W. L. Tuttle and Dr. Joseph A. House, of New York City, proposed by Dr. Herschel N. Waite ; Dr. G. Bettini de Moise, of New York, proposed by Dr. Blyer ; Dr. Thomas J. Allen, Shreveport, La., and Judge A. A. Gunby, Monroe, La., proposed by Dr. Joseph Jones ; Dr. William L. Baner, of New York City, proposed by Dr. Frank H. Ingram ; Dr. William H. Drewry, Assistant Physician Central Lunatic Asylum, Petersburg, Va. ; W. Lane O'Neil, Esq., New York City ; Dr. J. Alban Kite, Medical Examiner, Nantucket, Mass. ;

Dr. Selden H. Talcott, Superintendent Insane Asylum, Middletown, N. Y.; Dr. Evans Laplace, New Orleans; Dr. E. D. White, New Orleans, and Dr. L. G. Perkins, Superintendent Insane Asylum, Jackson, La., proposed by Clark Bell, Esq.

Corresponding: Dr. Van Persyn, President Nederlandsche Nerreennig ter Bevordering der Psychiatrie, Holland, proposed by Clark Bell, Esq.

The newly elected officers were then duly installed.

President-elect Clark Bell, Esq., delivered his inaugural address.

On motion of M. Ellinger, the recommendations of the address were approved by the Society, and the chair requested to appoint committees to carry same into effect. The Treasurer was, on motion, granted further time to complete his annual report.

The chair announced the death of Dr. Ira Russell, Vice-President of the Society, and paid a tribute to his high character and public services.

The President also announced the death of Dr. J. H. Leveridge, and J. E. McIntyre, Esq., formerly Secretary of the Society, a young lawyer of promise who had gone to California for his health, but who had recently died in that State.

The chair also announced that he should offer a prize of \$100 for best essay on any subject within the domain of medical jurisprudence. Competition to close November 1, 1889.

The Society then adjourned.

FRANK H. INGRAM, Assistant Secretary.

FEBRUARY SESSION.

PRESIDENCY OF CLARK BELL, ESQ.

Regular meeting of the Medico-Legal Society was held February 13th, 1889, at the Buckingham Hotel. Minutes of the January meeting were read and approved. The following persons were elected active members on the recommendation of the Executive Committee. Proposed by Clark Bell, Esq.:

Dr. F. J. Kinkead, Galway, Ireland ; Dr. Connolly Norman, Superintendent Insane Asylum, Dublin, Ireland ; Hon. Edward Bermudes, Chief Justice Supreme Court of Louisiana ; E. M. Hudson, Esq., New Orleans, La. ; George D. Bradford, M.D., Homer, N. Y. ; Daniel Clark, M.D., Superintendent Insane Asylum, Toronto, Canada ; C. Chase Wiley, M.D., Assistant Superintendent, Pittsburg, Pa. ; Elon N. Carpenter, M.D., Superintendent Insane Asylum Amityville, N. Y. ; Milton C. Gray, Esq., New York City ; Wm. James Parker, M.D., Nashville, Tenn. ; Hon. Locke E. Houston, Judge First Judicial District, Aberdeen, Miss., and Harry W. Lewis, Esq., proposed by Mr. Albert Bach.

The paper of the evening was "Insanity as a Defence to the Charge of Crime," by J. Hugo Grimm, Esq., of St. Louis, Mo. It was read by the Secretary, Mr. Albert Bach. On motion by unanimous consent the Society proceeded to the election of Vice Presidents. Dr. Kinkead was selected for Ireland ; Dr. Daniel Clark for Ontario, Canada ; Dr. S. Bishop, of Reno, for Nevada ; Dr. Connolly Norman was appointed Chairman of the Committee on Nationalization for Ireland. The President laid before the body a bill pending in the New York Legislature, for the appointment of a Board of Lunacy Commissioners.

On motion the Chair was authorized to appoint a committee to memorialize the Legislature upon this subject.

Mr. E. W. Chamberlain called the attention of the Society to the cases of Mrs. Burrows and Mrs. White-ling, recently condemned to death in Philadelphia, Pa., for homicides. He made a detailed statement of the facts in the case of Mrs. Burrows. He moved the appointment of a committee to investigate these cases and report upon the following question: "How far is the insanity of to-day due to sexual causes?" After debate the motion was unanimously adopted. The Chair announced the following committee: E. W. Chamberlain, Chairman; ex-Governor Henry M. Hoyt, of Philadelphia; Dr. Alice Bennett, Superintendent Insane Asylum, at Norristown, Pa.; Dr. P. Bryce, Superintendent of the Alabama State Asylum at Tuscaloosa, and Dr. A. A. Rice, Superintendent of the Mississippi State Asylum, at Meridian. On motion of Mr. Chamberlain, the President was added to the committee. The President stated that one of the authors of the papers sent in competition for the prize essays desired the manuscript returned, the paper not having received a prize, or honorable mention. On motion it was resolved that the President be authorized to return the paper to the author.

On motion the Society adjourned.

ALBERT BACH, Secretary.

MARCH SESSION.

PRESIDENCY OF CLARK BELL, ESQ.

March 13, 1889.—Society met at Buckingham Hotel, President Bell in the chair.

The minutes of the February meeting were read and

approved. The following gentlemen, proposed by Clark Bell, Esq., were, on recommendation of the executive committee, duly elected as

ACTIVE MEMBERS.

Thomas Dimmock, M.D., 46 E. 30th street, N. Y. city; T. O. Brewer, M.D., Monroe, La.; Dr. J. T. Steeves, Supt. Insane Asylum, Frederickton, N. B.; Otto V. Lee, Esq., Clayton, Ala.; James E. Hawkins, Esq., Birmingham, Ala.; Judge A. L. Palmer, Judge Supreme Court, St. John, N. B.; Judge W. S. Ladd, of the Supreme Court, Lancaster, N. H.; Edward J. Doering, M.D., President Medico-Legal Society of Chicago, Chicago, Ill.; William H. McIntyre, Jr., Esq., 85th street and Boulevard, City; Judge George H. Sanders, Little Rock, Arkansas; Dr. Dewitt Webb, Jacksonville, Florida; Sir John C. Allan, Chief Justice of the Supreme Court of New Brunswick, Fredericton, N. B., and the following as

CORRESPONDING MEMBERS :

Prof. C. Luchini, Editor *Revista Penale*, Belogne, Italy; Prof. BROUARDEL of Paris, France, President Medico-Legal Society of France, was, on motion of Mr. Clark Bell, and on recommendation of Executive Committee, unanimously elected an Honorary Member.

The Chair then introduced Dr. Alice Bennett, Supt. Pennsylvania State Hospital for Insane at Norristown, who read a paper entitled *Periodic Insanity among Women*, as illustrated by the case of Sarah J. Whiteling and others.

The Chair stated that he had sent a copy of the brief filed by Dr. Bennett with Pennsylvania State Board of Pardons in the case of Sarah J. Whiteling condemned to death, on March 27, to various prominent alienists, and had received replies from Dr. W. W. Godding, Supt. Govern-

ment Hospital at Washington, which was read by Dr. Eben N. Carpenter. Dr. P. Bryce, Supt. Alabama State Hospital for Insane, which was read by Prof. Thwing, Dr. Rice, Supt. Mississippi State Hospital for Insane, read by the President. Prof. J. J. Elwell of Cleveland, which was read by Mr. Albert Bach. Dr. A. P. Reid, Supt. Asylum, Halifax, Nova Scotia, read by M. Ellinger, and others.

Discussion of the paper was then opened, and remarks were made by Albert Bach, Dr. Lucy M. Hall, Dr. Elon N. Carpenter, Mr. Moritz Ellinger, Mrs. M. Louise Thomas, Dr. Matthew D. Field, Dr. Elizabeth N. Bradley, Dr. Peet, Dr. Frank H. Ingram, Mr. E. W. Chamberlain, the President, and the debate was closed by Dr. Alice Bennett.

Dr. Peet was called to the chair and the President made an address on the life, character and public service of Prof. Francis Wharton, LL.D., Honorary Member of the Society, recently deceased, and moved that a fitting memorial should be prepared and sent to the family of the deceased, expressive of the sense of the Society over the bereavement caused by his death.

The Society adjourned at a late hour.

ALBERT BACH,
Secretary.

*DISCUSSION ON DR. ALICE BENNETT'S
PAPER.*

WASHINGTON, D. C., March 2, 1899.

MY DEAR SIR:—I have your favor relative to the Whiteling case, and Dr. Bennett's brief before the Penn. Board of Pardons in the same.

Of the individual case I know nothing beyond the newspaper statements and the brief already referred to, but it is a fact well known to every one familiar with insanity that sexual disorder is a frequent cause of insanity in women, and that the type of insanity depending on disordered menstruation is emotional, often suicidal, sometimes homicidal.

If, as Dr. Bennett intimates, hallucinations of hearing are present in Mrs. Whiteling, there can be no question of her insanity.

While the fact should never be lost sight of that multitudes of women suffer from ill health with disordered menstruation who go through life perfectly sane, and in cases of homicide, indubitable demonstrable evidence of mental alienation ought to be present before the individual is pronounced insane, yet the studies of a lifetime among them have so impressed me with the intimate dependence of the mental condition upon the physical state that in any case where such unnatural crime as infanticide is shown to be recurrent and associated with the menstrual period, in the absence of any other observed evidence of insanity. I should prefer to say that I had failed to discover evidence that undoubtedly existed rather than to pronounce the woman not insane.

Very truly yours,

W. W. GODDING.

CLARK BELL, Esq., President Medico-Legal Society.

ALABAMA INSANE HOSPITAL,)
TUSKALOOSA, ALA., Feb. 24th, 1889. }

CLARK BELL, Esq., New York City:—

DEAR SIR—I am in receipt of yours of the 19th inst., inclosing the newspaper clippings describing the cases of Mrs. Whiteling and Mrs. Burrows, who are under sentence of death for murder. The facts, as recited in the newspapers are, of course, too meagre to justify a positive expression of opinion as to the mental condition of these unfortunate women, but they are quite sufficient to raise a reasonable doubt of their sanity. In view of the statements of the experts who have examined these women, it is clearly the duty of the Court of Pardons, or whoever has the authority, to send Mrs. Whiteling and Mrs. Burrows to an asylum for the insane, where they should be kept under expert observation until their condition can be clearly ascertained. If insane, they should be kept in confinement until restored, and then only discharged by order of the Governor; but if they are not insane, they should be remanded to prison. This is the course we pursue in Alabama. I can hardly believe that a great State like Pennsylvania will permit the execution of persons who are known to be insane. I am aware of the fact that there has been recently a few notable departures from this rule, and that a few men of high authority have been found to justify such an inhuman procedure; but I am glad to say that the consensus of opinion, both legal and medical, utterly oppose a return to this barbarous practice.

I have met with many cases in my thirty years' care of the insane of the homicidal impulse in women at the climactic period of life, and as a result of sexual irregularities in early life. A few years ago, a lady of superior culture and refinement aged twenty-eight, developed a species of homicidal mania two weeks after her marriage to her second husband. She attempted the life of this husband, and succeeded in destroying with poison her two children by a former husband. She was sent here, and in three months was returned home perfectly re-

stored, and has since made a good wife and mother. I could cite many similar cases if called upon.

I trust that your efforts in behalf of Mrs. Whiteling and Mrs. Burrows will prove successful and that we shall hear no more in this humane and enlightened age of the barbarous and disgraceful practice of condemning the insane to death.

Very truly yours,

P. BRYCE, Supt.

EAST MISSISSIPPI INSANE ASYLUM, }
MERIDIAN, MISS., Feb. 20, 1889. }

CLARK BELL, Esq.:—

DEAR SIR—Yours of the 15th inst., with enclosed clippings from New York papers, to hand.

While I, of course, know nothing of the merits of the case of either Mrs. Burrows or Mrs. Whiteling, yet from the information obtained from these clippings, with reference to Mrs. Burrows' case, I would say that on its face, it presents to my mind clearly, one of *insanity* of the *emotional type*. While she may not have shown it in any other act, the one of trying to take the life of her husband and herself looks as though it was *the mad thought of the moment*, especially when we learn that she had conversed freely with her neighbors, yet had made no threat. Prevented from self-destruction, she carries with her into the trial the weapon with which she hopes to accomplish it, viz.: the withdrawal of the plea of insanity and the pleading of guilty. Certainly no sane person would do this. An open attempt at suicide before the bar of the court, and it is permitted. While I am no lawyer, yet it does occur to me that where a plea of *insanity* is entered, it should be provided for by law, that it must in every case be entered upon oath, by some relatives, friends or attorney of the accused, and that no power in such cases should rest in the defendant to withdraw such plea, and that a trial should at once be entered into to test the question of sanity or insanity, before entering upon the criminal trial, as is so often done in habeas corpus cases, to test the right to bail. To ask an insane person to answer "Guilty," or "Not Guilty," seems to me travesty upon criminal jurisprudence.

I feel that it is the duty of the Medico-Legal Society to interpose for mercy, especially in the case of Mrs. Burrows, and Mrs. Whiteling, too, if there are good reasons to *suspect* insanity, and I am of the opinion that the Board of Pardons should be willing to have the case submitted to a competent commission of experts for thorough examination and investigation, and that such report as made by this commission should form a part of the reasons for their action in these cases, before submitting them to execution. To this end I think the Society should diligently work.

C. A. RICE, M.D.

CLEVELAND, March 11, 1889.

HON. CLARK BELL:

Your note just received. Answer must be brief, the time allotted is so short—the 13th inst. Can only submit my views in the form of proposi

tions, without argument or facts upon which they are based, and by which they are supported.

I. But one reason in any case where the penalty is death can justify such extreme judgment, to wit, the protection of society—*salus populi suprema lex*—to get rid of the criminal and as a warning to others is the only justification, not punishment but protection to the community. The general protection of society is so inexorable that the law does not weigh nicely the degree of intelligence or of mental strength in the individual offender. *De minimis non curat lex* is the rule of law. If only the well balanced minds were held accountable, the courts might be abolished, and society left to defend itself *en masse*. A rule of law must be drawn somewhere, and no better has yet been discovered than the old well tried one, to wit: "A knowledge of right and wrong." The old maxim applies here also: *Omnis innovatio plus novitate perturbat, quam utilitate prodest*. It is dangerous to allow even judges to swerve from long established precedent or waver according to their own opinions on an old well settled principle of law and decide such a case on their own judgment. He must declare the old law, not make a new one, when the principle has been long settled. Then there is stability and the rule of law is understood. The wisdom of the law has established a rule of law, in fixing responsibility in cases of murder. The accused must know that his act is wrong and against law. This long acted upon and much assailed rule stands a breakwater against fine spun theories of emotion in human responsibility for conduct affecting society. The rule doubtless sometimes works injury to the individual for the general good. What rule of law does not? In the end, however, it works the greatest good to the community to the greatest number. Without the rule the courts would be at sea without sun or compass.

II. The rule of responsibility for crime being settled, a vastly important question remains, and that is how is the question whether there is knowledge of right and wrong to be determined as in the case in hand? Did Mrs. Whiteling have this knowledge at the time of the homicide? If she had not this knowledge, why not? It is impossible to avoid the use of the term insanity, yet its use adds greatly to the difficulty and confusion in settling these questions on which the whole case hangs.

Insanity is a relative term of absolutely impossible definition. Language can no more master it than it can the terms health, sickness, light, darkness, heat, cold, good, evil. These are all relative terms. What is health to one person is sickness to another. What is light under one state of facts, is darkness under another. One person is cold when another is warm. An act may be right under one state of facts and wrong under another. A condition of sanity in one person is insanity in another. What would be called insanity in a man who had acted differently in his previous life would be called his normal condition if such conduct has been his uniform rule of action. Hence the folly of relying upon or trying to define these relative terms. No definition can be formulated that does not complicate any case of alleged insanity.

Each case of so-called insanity is *sui generis*. No two cases are ever exactly alike, any more than any two cases of sickness are precisely alike. There are constitutional and a thousand other differences arising that render

it necessary that each case should be judged by itself and compared with itself. All aberration of mind results from malformation of brain or from physical disease—generally from disease. It is impossible to express an intelligent opinion in a case of this kind without hearing or reading the evidence. I see no peculiar difficulties or complications in her case that do not arise in most of the cases where insanity is interposed as a defence. The state of her mind at the time of the homicide must be compared with that of her former self—with nobody else. A sudden or gradual change from her former mental state indicates disease somewhere. Sexual disturbance is a common cause of mental aberration—generally temporary in its effects. Knowledge and intent being the essence of the crime, a physical condition may have existed to such an extent as to totally obliterate the condition of knowledge and intent, which condition the law renders a complete defence. Here we see the necessity and wisdom of the old rule. The law does not contemplate responsibility in such a case.

From the items of evidence you send me, and from the well known fact that the local trouble mentioned is a frequent cause of mental disturbance, I am inclined to believe the defendant irresponsible for her act—the victim of disease, and not able to discriminate between right and wrong.

III. This being her condition, how illogical and wrong is the punishment that Dr Bennett seems to be struggling for. She as an expert and others perhaps, prays for imprisonment for life! She is guilty and should suffer the extreme penalty of the law, or she is innocent and should not be punished at all, but cared for in the most skillful and tenderest manner until restored to health—in the meantime simply restrained that she may not injure herself or others. There is no middle ground. If the cause alleged for her mental disturbance be correct, she may be expected to wholly recover from her infirmity, as the function disturbed is a self-limited one, and she is now near that limit, according to Dr. Bennett.

J. J. ELWELL, of the Cleveland Bar.

NOVA SCOTIA HOSPITAL FOR INSANE, }
HALIFAX, March 6, 1889. }

CLARK BELL, Esq.:—

DEAR SIR—Your favor and enclosure received. Dr. Bennett's article is well written, but she tries to prove too much. Her plea is that a menstrual woman, especially if a little light-headed, can be guilty of no crime—even murder—and of all the objections I have heard against women practicing as doctors, I have never seen the objection so forcibly, and I believe accurately put as she has done in her apostrophe to the powers that be. She also enters a plea for a monopoly of mental derangement from sexual causes, which I would wish to grant, if it could be done without ignoring the facts to the contrary. The sexual passions treat men pretty roughly when there is easily deranged mental balance.

The friends are the worst enemies of Sarah Whiteling when they are trying to force on her a life which she has forfeited to society—which if she retains she will be unable to use—if imprisoned for life, and society has in that life a threat as well as a possible future calamity, such as has occurred. Let her sleep. If a portion of the ability now I believe worse

than wasted were expended in devising the best means for ridding society from such murderers—say by some method of euthanasia—it would be better than carrying on the present agitation against that inert mass (the law, precedent and the judiciary its exponent). I use the term inert in a complimentary sense, for my experience has led me to believe that conservation or inertia, as shown in the history of law, has been of more service to society than anything else—even the high fees make it a luxury that is indulged in with consideration by those who have anything to loose, for the reason that an essentially bad government, if stable, is immeasurably superior to any form that vacillates, so is the fixture of law and precedent of more benefit to society than a system that changes. For a road that has deep holes and rocks and quagmires is a safe road; when these never change their places we learn their location and avoid them, and they are only as moles or blemishes on a woman's face—unsightly. We may fill up the holes and change the appearance, but this may not be improvement—a smooth surface may have a treacherous foundation.

I don't think we can improve on the Christian religion, and I would like the common law to be as fixed an entity, mistake or no mistake. However, I think Dr. Bennett's enthusiasm has gotten ahead of her judgment.

With regard to the proposition, "insanity as the result of sexual causes," there is no room for argument. Causes of disease are predisposing or remote and exciting or proximate. Insanity (if we exclude the paretic or general paralysis and the traumatic insanities) has for remote cause either hereditary or defective nervous organization which does not originate in the disease we call insanity, unless when lighted up by the exciting or proximate which may be any one of, I may say, hundreds, of which sexual causes have no more influence than very many others. It was believed that the sexual system of females had much to do with causing insanity, but I have carefully looked over Dr. Bennett's reports and find that her experience corresponds with that of superintendents in general, the female sexual system being a cause amongst others, but nothing special to be noted more than in the case of men or the influence of any of the passions on a weakened nervous system.

But this subject is too wide for casual correspondence, and the time is too limited to dwell on it more at length. Yours truly,

A. P. REID.

MR. ALBERT BACH: Do you find, Dr. Bennett, as a result of sexual causes, any particular organic change evinced through an examination of the patient, which would lead you to the conclusion that this was an inducement towards insanity? I am of the opinion that nervous conditions are the result of disorder of the body, and not to be considered as evidence of insanity, destroying knowledge of right and wrong; in other words, that a mere impulse

should not be considered as an excuse for the perpetration of crime.

DR. LUCY M. HALL: I have certainly been greatly interested in what has been said here this evening, and it is a subject to which I have necessarily given some thought, as at one time I was physician at the State Reformatory for women in Massachusetts, and the question of periodical excitement was one which I had considered in the discharge of my duties towards these women. For the sake of science and somewhat to satisfy my curiosity, I kept a tabulated record of the condition of women who had been removed to solitary confinement as punishment for outbreaks of violence (sometimes towards fellow prisoners, and sometimes to the officials in charge), knowing well that they would be punished. I found that in thirty cases there were twenty where women were menstruating at the time that these offenses were committed. During my service there I found no woman who was insane at that time. Dr. Eliza Mosher, my colleague, who preceded me at the prison, told me of one case there of absolute insanity—a young woman who was perfectly sane during the interval, and became decidedly insane during menstruation. From observation it was found that insanity recurred at the menstrual period and left her when the period terminated; finally she had to be sent to the Worcester Asylum. Now, to return to my cases. I observed them in solitary confinement, and I do not believe any one of them was insane. I simply believe they were of a low grade of intellect and allowed themselves to be swayed by their emotions more than a woman of cultivation would have done, and allowed themselves to commit these offences knowing they would be punished. I found that by reasoning with them, and telling them that they must guard themselves and

control themselves, there were fewer punishments at this time. I have known women whose shoes were too tight to become nervous and excited, and commit offences, and there are a thousand things that will make persons nervous and make them lose their balance, besides the one under consideration. I must say that I do not admire the tendency of scientific people, who are invariably finding scientific reasons, such as heredity, inebriety, and the subject under discussion, for all sorts of disorderly conduct, and we are in danger of arriving at a state where we will hold no one responsible for his misdeeds.

DR. ELON N. CARPENTER: My experience has been somewhat limited in these cases. I remember distinctly one case I have treated lately, a young girl, who is of very respectable parentage and a very well educated lady, who seems lucid at all times except during menstruation. Then she wants to murder. That seems to be her one idea. She has been at home from the asylum for two weeks, and even two months at a time, and I have had to keep a very close watch over her and keep her in confinement. I might be able to give you some more careful view of the subject later on, and would be glad to look the matter up and write my opinion based on my experience.

DR. MATTHEW D. FIELD: It is a question whether we speak of the title of the paper or of the case. I do not think that because Mrs. Whiteling was a woman and menstruated that this should be construed as an excuse for the crime.

The causes of insanity among men and women may be different, and to certain causes women are more susceptible. In considering responsibility for such a crime as that of which this woman is convicted, it is necessary to review carefully the act itself, considering all causes

and motives that may be of benefit or gain to the perpetrator ; then too, the individuals who are killed, and their relationship to the perpetrator.

For, when a person destroys those nearest and dearest to self, insanity may be strongly suspected, for statistics show that among the insane there are thirty suicides to one homicide, and eight to one are murderers of those who are naturally the nearest and dearest to themselves. With many of the homicides of the insane suicide is joined. I expect to testify to-morrow in the case of a woman who poisoned her three children, two of whom died. She was pregnant at the time, and in great want and distress. After having considered the motive for the crime it is just to look for physical and mental causes, and to see if such causes are sufficient to account for the act, or if the act be the natural outcome of such mental and physical states.

In the case of Mrs. Whiteling it appears from the paper of Dr. Bennett that sexual causes played only a small part in the causation of this crime ; for though the three crimes were perpetrated at three menstrual periods, and this may serve in a measure to explain the time of the commitment of these crimes, there are other and stronger evidences of insanity. Women are more emotional than men, and are under a great nervous strain at the menstrual period, during pregnancy, parturition and lactation and at the climacteric. One can see how insanity with morbid impulses, suicidal or homicidal, may manifest themselves at these times, owing to the nervous strain and extra draught upon the vitality of the woman.

Yet, when we come to consider the statistics bearing upon these points, we are unable to discover anything important. While I can recall cases of insanity where the manifestations were more pronounced at the men-

strual epoch, and of periodic insanity where the outbursts occurred at these times, nevertheless, I do not believe that I have met more cases of periodic insanity among women than men.

Dr. Field spoke at some length of the case of Mrs. Lebkuchner, which presented some features similar to Mrs. Whiteling's, which case will be reported in full by him at the next meeting.

MR. BELL: What was the date of the killing of the children.

Dr. FIELD: I think the 21st of March, the next Tuesday after the blizzard.

MRS. M. LOUISE THOMAS: I confess to a sense of impotency to treat with this subject, but the thought that comes to my mind is, that the woman whose case has been discussed in the paper read to us, is to be hanged by the neck in fourteen days from to-day, and that our conclusions on the matter may have some bearing upon the case. For myself, without previous knowledge on the scientific side of the question, I am disposed to accept the judgment of Dr. Bennett and to endorse her conclusions. I am the more disposed to do so because those who followed her, even those who seem to disagree with her in some degree, really made her argument stronger. My friend Dr. Hall confesses that in her experience she found it necessary to caution and advise the women under care to greater self-control during their periodical sicknesses. She found them liable to greater excitement, and at times it became necessary to place them in confinement. The last speaker, Dr. Field, tells us that he believes that women are more subject to morbid influences then than at other times. While he is not willing to declare that they are always led to extremes, he does admit that they are more subject to

morbid impulses. Now, as I understand Dr. Bennett's paper, that is exactly what she says, that all are not alike weak nor all strong, nor all good, nor all wicked, but in the case of Mrs. Whiteling she is a woman of low mental grade, and of very feeble character; that she was friendless and alone; that she did nurse her husband through a long sickness; that to the best of her capacity she did care for her children, and there does not seem to have been any quarrel in the case. I cannot imagine a case where a woman would destroy her children; I could a case of her husband, when he had ill-treated her and became her enemy, but not her child. Why the lion, the dog, or any of the brute creation will defend their young. I do not believe any woman in her right mind will destroy her child. Now that I may not be mistaken, I have no scruples against capital punishment, and believe in standing in defence of the law, but in striving to change the law if it is unjust. To an American citizen obedience to the law should be the highest and first duty. While I do not believe in capital punishment being the best guard to society, as long as society considers it so individuals have to accept it. I think this sinful woman should be just as amenable to the law as the man, and the fact of the criminal being a woman and pitying her on that account, I would certainly not offer that as an argument to save the life of Mrs. Whiteling, but I think the paper of Dr. Bennett has dealt fully with that. She has come up as a suppliant to New York, and we as scientists have a right to discuss the question in all its bearings. Now, while there is only fourteen days before the going out of this life, I wish the society would see the great power in this paper, and realize that this gentle lady has come and spoken for this woman with feelings superior to the ordinary woman. Women are very

modest, and some might think that there was a breach of modesty in bringing this forward as a case, but I think not. The Board of Pardons of Pennsylvania ought to hold over and give time to inquire whether this woman was insane or suffering from insanity. The dignity of the law cannot suffer from the delay. I would like to see the Medico-Legal Society form itself into a Board and go before the Board of Pardons and persuade them to give this friendless woman a stay of proceedings, that she might feel that there are hearts in sympathy with her, low, degraded and wretched as she is. I know that many men will declare against what is called sentimentality, but if there is any ground of reason for belief in this woman's insanity, I think it ought to be strengthened and everything done to save her from her fate.

DR. ELIZABETH N. BRADLEY : I would like to ask Dr. Bennett when she speaks of affection of the heart, does she mean enaemic or valvular disturbance ?

DR. BENNETT : I was referring to organic lesion.

DR. BRADLEY : I do not think that there should be a separate law for women and one for men, and I do believe that if a person commits murder, they should suffer by the law of the country in which the murder was committed. The Paris Medical School to which I belonged for some years, has a habit of getting all the bodies of criminals, and subjecting them to a microscopical examination. The body and the head separated by the guillotin, a thorough examination, maeroscopical and microscopical, is made of each. There was not long ago a man named Pranini, who first killed a woman for her jewelry, then murdered the maid and child. They investigated his past life, which was one of wickedness and crime, and a pardon was refused. Why

should a woman be punished less severely than a man? If we are to invoke physical lesion, certainly a person born in the lowest scums of the city is not a moral being, and from such persons we cannot expect a moral responsibility. A man I know of, started out from a church, where he had been praying, and met a priest who had never done him the slightest injury, and killed him. Was he accountable? He was the child of drunken parents. Either capital punishment exists in order to rid society of people who are dangerous to it, or it does not.

DR. FIELD : I just want to add that Mrs. Lebkuchner has an enæmic murmur of the heart and a rapid pulse.

MR. MORITZ ELLINGER : Perhaps I may be permitted to express to Dr. Bennett the thanks of the Medico-Legal Society for the very interesting paper which she presented this evening, outside of its immediate interest. The question discussed in the paper is one of the widest importance. Are we to recognize as a fact that women are so constituted organically that they cannot occupy the same positions that require the same force and strength that man must give in order to carry out his destiny? Woman has the tenderer body, although she is the strength and purifier of society, and in treating woman with tender care we should always think of them as the weaker vessels. I beg to express my thanks to the speaker before the last, Mrs. Thomas. She has presented to my mind one of the strongest arguments in the case of Mrs. Whiteling. The very fact that a woman destroys her own child is so unnatural, so abnormal, that in my mind it at once establishes a strong presumption of insanity. A woman of sound and normal mind is incapable of destroying her own offspring. Doing that establishes beyond a doubt a diseased mind, and in listening to the case as presented by Dr. Bennett the belief grows

stronger. I also agree that the Medico-Legal Society should take some decided issue in the case; that it should not be presented here merely for scientific purposes, but for the purpose of sounding the whole question. The men who are scientifically enabled to speak with authority on the question ought to do so, not for this particular woman, Mrs. Whiteling alone; not for the sake of saving a miserable life that has no friends in this world, but to save the reputation of the great city of Philadelphia and the State of Pennsylvania, of saving the reputation of humanity. We should not hang a person that is not responsible, and to my mind Mrs. Whiteling was insane at the time she committed the crime, therefore should not be executed, for it would be a disgrace to our civilization, and for that reason the Medico-Legal Society should come forward.

DR. FRANK H. INGRAM: I would offer a word of dissent from Mrs. Thomas in regard to the killing of children by the mother. It is not always an evidence of insanity, not any more so than killing of a son by the father. Generally, the mother has the greater affection, and it is to her credit. A great many of these women have none of the trials attending child-birth. I have known women to have three, four and five children and think no more of it than hanging out a washing. I think this is no evidence of insanity. I think as far as sexual excess is concerned it may produce insanity. I have had over four thousand females in my charge, and for two years of that time I made it my business to see what effect menstruation had on them, and I found that in a great many of the cases the period preceding menstruation was the one in which the mental disturbance was most pronounced. It is well to call attention to the fact that in many women of poor nourishment, and where

insanity has existed, we find that during the period of menstruation, and before, a marked change will take place in the little blood vessels and in the regions about the ear penetrating the brain and producing the peculiar sounds spoken of and hallucinations, and it depends almost wholly on the conduct of the nerves about the time of menstruating, preventing activity, and the slowness of hearing is most marked at this time, and the muscles arising from them would be more disturbed at that time.

President Bell called Ex-President Dr. Peet to the chair and said: To-morrow the Board of Pardons meets in Harrisburg to further consider the case of Mrs. Whiting. On the 20th of February last they first considered it. A committee appointed by the society were represented before that Board, and a strong argument was presented by Dr. Alice Bennett and by Mr. E. W. Chamberlain, the chairman of that committee, who went there at my solicitation, and was heard before that Board. The law of Pennsylvania differs from that of New York in that the power of pardoning is not vested in the Executive. The case of Mrs. Burroughs is not yet before that Board. There has been no death warrant signed in her case. In Mrs. Whiting's case the death warrant is signed for March 27th, 1889. Dr. Bennett and Dr. Bradley do not differ on the case. Dr. Bennett would be the last person to excuse any one for crime, if she did not believe them to be insane. In the case cited by Dr. Bradley there was no plea of insanity offered, and insanity did not exist. If this woman was not insane she should suffer the penalty of the law. I hesitate as to our duty, because I am under the impression that the Board of Pardons are about to decide the case, not to set the woman free, but to give her a commutation of sentence to imprisonment for life. That would enable careful observations to be made, and

then future action could determine her responsibility before the law.

When Dr Goddings saw that hallucinations existed, he sustains the conviction of Dr. Bennett that insanity does exist. I yesterday wrote the Governor of Pennsylvania asking him to consider the propriety of giving a reprieve for a time, in case the Board of Pardons refused to commute her sentence, to enable him to call to the aid of the executive mind and the pardoning power, the most distinguished men of Pennsylvania, who could examine carefully and faithfully, and diagnose the case of the unfortunate woman, and see whether she was responsible for the act; and this was in the interest of the commonwealth of Pennsylvania, more even than of Mrs. Whiteling, for, as it has been stated, it is a question which not only the eyes of both cities, but the country are regarding. The woman says she has no desire to escape death. Whether she should be executed or not should only be determined by the facts of the case, looking towards whether they establish insanity. I ventured to suggest to the Governor that in cases where doubt exists, to satisfy it by asking eminent alienists to examine the case, and if need be, keep her under observation, and I begged of him to do so, if that emergency presented itself. I preferred not to wait until to-day, because of the immediate pressure of the case, and of the environment which surrounds this unfortunate, and because I did not then know that the Board of Pardons had not yet acted. I have been deeply interested in the paper, and very greatly interested in the subject itself. There is another duty before us—to contribute our quota of sorrow at the death of one of the able honorary members of the society, Dr. Francis Wharton, LL. D. I will now ask Dr. Bennett if she will close the discussion.

DR. BENNETT : I do not feel like taking up any more time of the society, but it is my duty to answer any question that I can. In answer to Dr. Field's question as to the relation of these crimes to the menstrual periods : The last period, previous to the tragedy, occurred in February. The dates of the crimes, March 20th, April 20th and May 22d, represent to my mind the periodical effort of nature to re-establish the interrupted function. I can give no satisfactory answer to the question put by the secretary, Mr. Bach.

MR. E. W. CHAMBERLAIN : I endorse the paper which has been read this evening. I wanted to get to some possible means of reaching the cause which produces murders and cruelties of this kind. It is not merely a question of punishment and mercy to an individual ; it is not merely a question of the application of the law to a particular case ; I want to go somewhat deeper than that, and I think the information that I want to put before the country generally has been appreciated. I have received a number of appreciative letters from a good many sources, and I might say further that I have prepared a series of questions that are to be submitted to alienists, framed upon the suggestion of all the committee, and I am hopeful that the answers that will come to this question will result in some permanent benefit, looking to the removal of morbid conditions of this kind.

JOURNALS AND BOOKS.

AMERICAN STATUTE LAW in force 1866, by Fred. J. Stimson, Esq. Charles C. Soule, publisher, Boston (1886).

This is a work of nearly 800 pages, to digest and compare the Statutes of all the States of the Union, the then eight Territories, and the District of Columbia. Part 1. Trials of State Constitution, with careful classification of the Bills of Rights; political provisions. Part 2. Trials of private civil law, both as to real and personal property; law of contracts and the natural relations of persons. The work is ambitious in thus attempting to grasp all these subjects in a single volume. To the subjects of which the work treats the author has brought great learning and study, and the labor is one for which the profession may well thank Mr. Stimson. It is no slight task to take up any one subject of law and examine it from the broad standpoint of this work, but when this examination extends over such a broad class of subjects we can see how convenient it is to the general practitioner anxious to see what the laws of various States are upon a given subject.

A supplement has been added January 1, 1888, which brings the work down to that date, and an analysis of the new codes and revisions adopted in Connecticut, Nevada, Alabama, Idaho and Wyoming since the first edition appeared. We think the bar generally will be under obligations to the author for the learning and research everywhere displayed in the work.

CONKLIN'S HANDY MANUAL AND WORLD'S ATLAS, land and sea. Chicago, Ill., 1888.

We do not recall a pocket edition of any book containing so much and varied information of a statistical, geographical and commercial character as this little book.

ALFRED BINET who has a great name as a student of psychology, micro-organisms, has of late attracted considerable attention by his work, "The Psychic Life of Micro Organisms. We thank Mr. McCormack for a translation of the *brochure* into our language.

ELECTRICITY IN DISEASES OF WOMEN. By G. Betton Massey, M. D., F. A. Davis, publisher, Philadelphia, 1889.

Dr. Massey's book treats of the proper apparatus for the correct application of electricity to gynaecology, and is filled with experimental illustrations. He treats of various currents, the Faradic, the Franklin and the incandescent light current as used medically.

We think his chapters on treatment of fibroid tumors, uterine hemorrhage, chronic endometritis, subinvolution and uterine displacements valuable to the profession. Its relation to Forensic medicine is not discussed, but it must have an interesting future.

GUY'S HOSPITAL REPORTS, 1888. J. & A. Churchill & Co., London, publishers.

This is the 45th volume, being volume 30 of the third series, and is up to

the previous standards. G. H. Golding Bird contributes an interesting paper on the treatment of scoliosis by Sayers' method; a family history of digital deformities by W. S. Montgomery-Smith is very interesting.

MATERIA MEDICA, PHARMACY AND THERAPEUTICS. By Cuthbut Bowen, M.D., F. A. Davis, publisher, Philadelphia, 1888.

The work's chief value is in therapeutics, of which practitioners will find it a reliable handbook.

TRANSACTIONS MISSISSIPPI STATE MEDICAL SOCIETY FOR 1888.

Dr. A. B. Holder contributes a paper on "Post-Mortem."

UNIVERSITY OF NEBRASKA.

Prof. Frank S. Billings has contributed an elaborate work of 425 pages on the "Swine Plague." Also a *brochure* by the same author on "Southern cattle plague and yellow fever from the etiological and prophylactic stand-points." These are profusely and elegantly illustrated.

Prof. Billings is the director of the Patho-Biological Laboratory of the University, and has devoted his best work to these subjects. The thanks of scientists are due him for these valuable contributions to scientific research as to causes of diseases in animals. Prof. Billings also replies to D. E. Salmon on "Swine plague and hog cholera," in a manner that leaves very little to be said on this subject.

THE INSANE IN FOREIGN COUNTRIES. By Wm. P. Lechworth. G. P. Putnam's Sons, 1889.

This very valuable and interesting work comes to us too late for review in this number, we shall review it in our next.

BOOKS, JOURNALS AND PAMPHLETS RECEIVED.

WOLFRED NELSON, M.D.—Cuba and Yellow Fever. The Isthmus of Panama and Contagious Diseases.

HAROLD P. BROWN, Esq.—Comparative Danger to Life of Electric Currents.

S. B. BUCKMASTER, M.D.—Illustrious Insane. First, Second and Third Biennial Report of Wisconsin State Hospital.

AMERICAN ASSOCIATION OF ACCOUNTANTS.—Constitution and By-Laws and list of members (1888).

ST. LOUIS PUBLIC LIBRARY.—Annual Report for 1887 and 1888.

LUCIAN PUSCH.—Spiritualische Philosophie is Erweiterter Realismus—(Liepzig) 1888.

H. J. GARRIGUES, M.D.—Germeinvers. Tändliche Vortrage. *Der Scheintod*, 1889.

G. P. CONN, M.D.—Report Health Department, Concord, N.H., 1888.

DR. ANGEL M. ALVAREZ TALADRIZ --Defensa Arcadia Valentin, Madrid. (1889).

EDWARD PAYSON THWING, M.D.—Psychological Studies; Their Scope and Utility.

DR. E. WYLLYS ANDREWS, }
DR. JAMES BURRY, } —Medico-Legal Aspects of Injuries to Spinal Cord. (1888).

DR. HENRY L. LEYMAN.—Railway Injuries to Spine. (1888).

ALBERT R. BAKER, M.D.—Opening Address Wooster University. (1889).

GENERAL WM. W. AVERELL.—Report on Soldiers' Homes. (1889).

THEO. W. FISHER, M. D.—Fiftieth Annual Report Boston Lunatic Hospital.

ELBRIDGE T. GERRY.—Manual of the N. Y. Society for the Prevention of Cruelty to Children.

MAGAZINES.

THE ALIENIST AND NEUROLOGIST commences its tenth volume with January number. It maintains its high standard, and is the leading American journal in its field of study,

ARCHIVES DE L'ANTHROPOLOGIE CRIMINELLES:—

Drs. Henri Coutagne and Florence contribute an interesting and very valuable paper on the medico-legal value of footprints as evidence in criminal trials. They examine the subject historically and urge:—

1. The preservation of the footprint itself as very important as evidence on which to convict.
2. The reproduction of the same by photography, careful measurements, casts and drawings, &c., &c.
3. The reproduction of the object of which it is sought to establish the footprint.
4. A comparison of the reproductions with those in question.

THE JOURNAL OF MENTAL MEDICINE, January number, 1889.

Dr. F. M. Sandurth gives a description of the Lunatic Asylum at Cairo, Egypt, in 1888.

Dr. J. Hughlings Jackson, a paper on Post Epileptic States.

Dr. Jas. C. Howdin describes the new hospital at the Montrose Royal Lunatic Asylum.

Dr. D. Hack Tuke discusses boarding out Lunatics in Scotland.

Dr. William Julius Mickle, a paper on "Antifibria in Pyrexia."

ANNALES MEDICO-PSYCHOLOGIQUES:—

This journal is conducted by Dr. Baillarger, Home Physician of Salpetriere, and Dr. Ritti, Physician at the National Home at Charenton.

The Collaborators, or Committee in Editorial Charge of the journal, are:—

Dr. Christian, Superintendent at Charenton.

Dr. Constans, Inspector-General of Asylums.

Dr. Dagonet, Superintendent at St. Anne.

Dr. Jules Falret, Superintendent at Salpetriere.

Dr. Lemaître, Honorary Physician at Asylum of Ville-Everard.

Dr. Motet, Ex-President Society Medico-Psychologiques.

Dr. Voisin, Physician at Salpetriere.

It has been established since 1843, and has completed six series containing seventy volumes, and is now in its seventh series, and publishes six numbers each year.

AMERICAN JOURNAL OF PSYCHOLOGY.—The February number contains a very interesting paper, by Dr. Fred. Peterson, entitled "The Autobiography of a Paranoic."

THE NORTH AMERICAN REVIEW.—Dr. Sarah E. Post contributes to the

April number an interesting article on "Thought Transference," and Dr. W. S. Searle one on the "Idiosyncrasies of Alcohol." The number otherwise is exceptionally good.

THE ECLECTIC.—Prof. Huxley's article on "Agnosticism" is reproduced from the *Nineteenth Century*, occasioned by the learned principal of Kings' College address at the Manchester Church Congress last October. Col. Robert Ingersoll makes this prelate's remarks also the text of a trenchant essay in the April *North American Review*, entitled "Huxley and Agnosticism."

SCRIBNER'S MAGAZINE.—Dr. Thomas Durgtel contributes a paper on the "Anatomy of the Contortionist," to an exceedingly interesting April number.

LIPPINCOTT'S MAGAZINE has the attraction of a complete story by Amelie Rives, with its usual array of readable articles.

ALBERT BACH, Esq., A. B. LL. B.

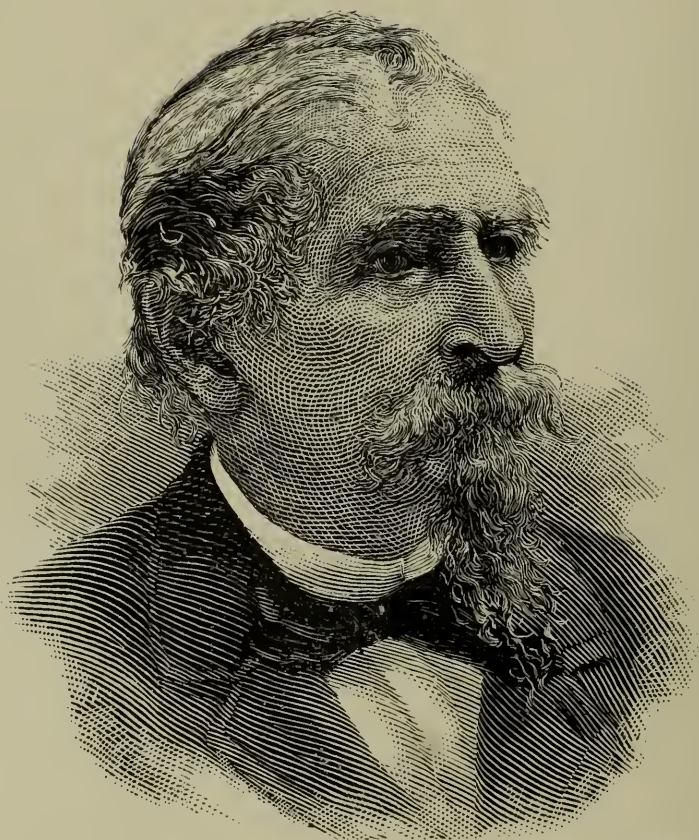
The Secretary of the Medico-Legal Society, Mr. Albert Bach, whose portrait we give in this number, is one of the rising members of the Junior Bar of the City of New York.

Born in the City of New York on December 28, 1854, he was educated at the College of the City of New York, where he graduated with honors in 1872, at the early age of 18 years, taking the senior prize for elocution. He graduated at Columbia College Law School at the age of twenty, which gave him admission to the bar before his majority, where he commenced the practice of his profession in New York City, where he has since resided.

Mr. Bach takes an interest in Forensic medicine and in the success of the Medico-Legal Society, of which he has been Secretary since January, 1886.

He is a close student, a fluent, ready and forcible speaker, and is an active, influential and able member of the body, and of the bar of his native city.

Mr. Bach is an accomplished linguist, familiar with the French and German languages, and has done good work in the Medico-Legal Society by his translations of the leading German writers.



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JOHN M. CARNOCHAN, M. D.

DR. JOHN M. CARNOCHAN.

Dr. Carnochan was born August 4, 1817, in Savannah, Ga. His family were Scotch, and he was educated at the High School in Edinburgh, where, after graduation, he entered the Medical University, and took the degree of M.D.

He was the favorite pupil of Valentine Mott. After his return from Scotland, in 1841, he entered *le Ecole de Medicine*, of Paris, where he remained six years, receiving instruction from the most eminent men of the French capital. He was a pupil of BRODIE, of CIVALE, LEFRANC, ROUX and VELPEAU.

In 1847 he returned to New York and commenced his career as a Surgeon, which has been second to none upon our Continent ; his brilliancy of operation, delicacy and facility of touch, won for him great renown at home, and the fame of his original operations extended to the capitals of the Continent.

Dr. Carnochan was in charge of the Hospital for Immigrants, at Ward's Island, from its establishment in 1850, for many years. He was Health Officer at the Port of New York for two years, appointed by Governor Hoffman. He was the author of "A Treatise on the Etiology, Pathology and Treatment of Congenital Dislocation of the Head of the Femor," and since 1877 has been publishing his "Contributions to Operative Surgery," being examples from his practice for the past thirty years. He was engaged upon this work at the time of his death.

He contributed a paper to the Medico-Legal Society

entitled "Cerebral Localization in Relation to Insanity," which awakened extended discussion, and was an interested participator in the discussion of questions before the body. He was chairman of the Permanent Commission of the Medico-Legal Society, President of the MEDICO-LEGAL JOURNAL Association, and Vice-President of the Medico-Legal Society at the time of his death.

He was a great student, a lover of forensic medicine, and was for years Professor of Surgery in the Medical College of the University of New York.

The medical profession, American surgery and Forensic medicine sustained a great loss in his death.

He was the Nestor of American surgeons, and may well be ranked as one of the famous surgeons of the world, at the moment of his death.

CONSTITUTION AND BY-LAWS

OF

THE MEDICO-LEGAL SOCIETY

OF THE CITY OF NEW YORK.

CONSTITUTION.

ARTICLE I.

SECTION 1. This Association shall be known as the MEDICO-LEGAL SOCIETY.

ARTICLE II.

SEC. 1. There shall be three classes of members in this association, viz: Active, Corresponding and Honorary.

SEC. 2. Any person in good standing in either the medical, chemical or legal professions in the United States, and scientists, recommended by any member of either of said professions, respectively, after consideration of the proposal for membership by the executive committee, if recommended by the executive committee, shall be eligible to Active Membership.

SEC. 3. Any member of the medical, chemical or legal professions residing outside the city of New York, and scientists, recommended by the executive committee, shall be eligible to Corresponding Membership.

SEC. 4. Physicians, chemists and lawyers, of recognized eminence in their respective professions, and scientists shall be eligible to Honorary Membership, if recommended by the executive committee. Any person so elected may be removed from such membership upon the recommendation of the executive committee. Such roll of honorary members shall not contain more than forty names, of persons so selected, and the number shall not include more than twenty from either of said professions of medicine, chemistry or the law.

SEC. 5. The society may remove any honorary member upon recommendation of the executive committee.

SEC. 6. Any person contributing one hundred dollars in cash, volumes or library furniture, accepted as such by the library committee, shall be thereby constituted a life member of the society. A like contribution of two hundred and fifty dollars shall constitute the donor a patron of the library. A like contribution of five hundred dollars shall constitute the donor one of the founders of the library.

ARTICLE III.

RIGHTS AND PRIVILEGES.

SEC. 1. Active members only whose dues shall have been paid for the year preceding shall be eligible to nomination or election to office, or en

titled to vote. All other rights and privileges shall be equally enjoyed at the meetings of this association.

SEC. 2. Honorary and corresponding members may have the printed transactions of the association delivered to them upon payment of one-half the sum of the annual dues of active members. The annual dues of members residing outside the State of New York shall be two dollars.

ARTICLE IV.

OFFICERS.

SEC. 1. The officers of this society shall be a President, two Vice-Presidents, styled first and second respectively; a Secretary, an Assistant Secretary, a Corresponding Secretary, a Treasurer, a Librarian, an Assistant Librarian, a Chemist, a Curator and Pathologist, and six Trustees.

SEC. 2. The Society may also elect at the annual meeting, or at any meeting called for the purpose, at least one Vice-President for each State and Territory of the Union, or for any state or country having active members therein who shall *ex-officio* be members of the executive committee.

ARTICLE V.

DUTIES AND PRIVILEGES OF OFFICERS.

SEC. 1. The President, or in his absence the vice-presidents in their order, or in their absence a chairman *pro tempore*, shall preside at all meetings, and such presiding officer shall perform all the duties connected with such office. The President shall be *ex-officio* member of all committees.

SEC. 2. The Secretary shall keep the minutes of the proceedings of the meetings of the society, and of the executive committee, and at the stated meetings of the society, he shall collect and give receipts for the fees and dues of members, in the absence of the treasurer; and he shall pay over the sums so collected to the treasurer, as soon thereafter as practicable, giving the name or names of those having so paid, therewith, to said treasurer, and take a receipt from the treasurer therefor; and, in addition thereto, he shall notify officers and members of committees of their election or appointment, and members-elect of their election; certify official acts and procure and sign with the president certificates of membership, and deliver the same to new members; and perform such other duties as are usually connected with the office of secretary.

SEC. 3. The Assistant Secretary shall keep a list of the active members, issue the notices of the meetings, and in the absence of the secretary perform his duties hereinbefore specified.

SEC. 4. The Corresponding Secretary shall conduct all the correspondence of the society, except that with active members.

SEC. 5. The Treasurer shall attend at all meetings to collect the fees and dues of members and give receipt therefor, personally or by aid of the secretary as hereinbefore specified; and he shall have charge of all moneys so collected, belonging to the society, and deposit the same in the name of this society, pay all expenses incurred by the society, by and with the consent of the executive committee; and he shall present an account of the moneys so collected and deposited, and expended, with the items of deposits or of expenditure, for the month preceeding, at every meeting of the

executive committee ; and he shall report the number of members in the society, up to the date of said report, with the number of those in arrears, with the respective sums due from each, at least once in three months, or oftener if so required by said executive committee ; and upon the last stated meeting of the society of the current year, he shall make his annual report to the society at such meeting ; and state the amount of money on hand at the commencement of said year ; the amount received for dues from members, and for initiation fees from members-elect, during said period, and the names of persons who had been so elected, who had failed to pay such fees and dues ; and the names of members who are then in arrears for dues, with the amount so due from them respectively, at the date of said report ; and he shall add thereto such recommendations in regard to improvements which can be made to facilitate the transaction of the business of his office as he may deem beneficial.

SEC. 6. The Librarian shall preserve, and hold accessible to members of the society, all its written and printed contributions contained in the library, and report the condition thereof at the stated meeting of the society, prior to the meeting for the general election.

SEC. 7. The Chemist shall have charge of all the business of the society relating to chemistry ; and he shall make his report upon the matters of such description which have been brought before the society during the year, with his recommendations in regard thereto.

SEC. 8. The Curator and Pathologist shall have charge of all pathological specimens offered to the society, and prepare the same for exhibition ; and upon the direction of the society or of the executive committee, he shall take proper means to preserve such specimens as possess Medico-Legal merits, for the benefit of the society, and make an annual report in regard thereto.

SEC. 9. The Trustees of the society shall have charge of the general business management and financial transactions which shall affect the welfare and standing of the society ; and they shall receive all property belonging to the society, and deliver the same to the proper officer of the society assigned to have charge of the same ; and said trustees shall exercise a general supervision over such property, for the preservation of the same, and make and retain an inventory thereof, for the use of the society ; and at the annual meeting said trustees shall make their annual report to the society to show the condition and value of such property, and the increase or decrease in such value, together with a description thereof, and as to the value thereof at the last annual report, and the value of all additions thereto, with a description thereof, since such prior annual report ; and said trustees shall perform all other proper duties usual to the office of trustees of similar societies.

SEC. 10. It shall be the duty of every officer or trustee of the society to attend at every meeting of the society and of the executive committee ; and any officer or trustee who neglects to so attend, and who shall absent himself from two of such consecutive meeting, without sending a notice in writing of intended absence, shall be deemed to have vacated his office thereby, and a notice of such vacancy shall be thereupon published at said second meeting ; and the said office shall be filled by election at the next

stated meeting, for the balance of the term of such officer, unless such officer is excused by the society or executive committee.

ARTICLE VI.

THE STANDING COMMITTEES.

SEC. 1. The officers and trustees of the society shall constitute an Executive Committee, which shall meet at least once in each month, prior to stated meetings of the society, to consider and transact such business as shall be transmitted to them by the society.

SEC. 2. The ex-presidents of the society, while they attend the meetings, and remain in good standing as active members of the society, shall be *ex-officio* members of the executive committee.

SEC. 3. The society may appoint or provide for the appointment of standing committees for its business and work, but not to conflict with any power or duty now therein vested in any committee; a majority of each committee shall constitute a quorum. The president of this society shall be *ex-officio* member of all committees.

ARTICLE VII.

PERMANENT COMMISSION.

SEC. 1. The organization of a Permanent Commission may be provided for and continued by the society.

ARTICLE VIII.

TRUSTEES.

SEC. 1. There shall be six Trustees chosen equally from the medical profession or chemists and the legal profession, two of whom shall be chosen annually for three years; and in the case of a vacancy occurring, the same shall be filled for the unexpired term by an election from the profession to which said office belonged.

ARTICLE IX.

ELECTIONS.

SEC. 1. All elections shall be determined by a majority of the votes cast for the office to be filled thereby. All officers shall be selected equally as near as practicable from the medical profession or chemists and the legal profession.

SEC. 2. Elections of new members shall be decided by requiring at least two-thirds of the votes of members present at a stated meeting, voting by ballot, in favor of such election, unless the society order otherwise.

ARTICLE X.

AMENDMENTS—HOW MADE.

SEC. 1. Amendments may be made to this Constitution, after having been proposed in writing, at least one month prior to the stated meeting, when the same shall be called before the society to be voted upon, after the same shall have been recommended by the executive committee. A majority vote of the members present shall be necessary for the adoption of such amendment.

ARTICLE XI.

BY-LAWS.

SEC. 1. By-laws for the regulation of the business of the society may be prepared and adopted by the society.

BY-LAWS.

ARTICLE I.

MEETINGS AND QUORUM.

SEC. 1. Stated meetings of the society shall be held once in each month, except in July and August, on such day as may be designated by order of the society or executive committee; and special meetings at the time fixed by vote or by the executive committee. The president may call special meetings and he shall do so upon the request in writing of ten members.

SEC. 2. Stated meetings shall begin at eight o'clock, P. M., or as soon thereafter as a quorum is assembled; and special meetings at the hour designated in the call therefor.

SEC. 3. Ten active members shall constitute a quorum for business before the society.

SEC. 4. Five members of the executive committee shall constitute a quorum for business before such committee, and a majority of all other committees.

ARTICLE II.

ADMISSION OF MEMBERS.

SEC. 1. The names of candidates shall first be referred to the executive committee. If reported upon favorably by said committee, they shall be ballotted for at the time the report is made, or at some subsequent stated meeting. Two-thirds of the vote cast shall be necessary for an election to membership.

SEC. 2. Every active member-elect shall sign the Constitution, or a formal acceptance of membership, within three months after notice of his election; and in default thereof, said election shall be deemed void.

ARTICLE III.

FINANCIAL AND ETHICAL REQUIREMENTS, AND VIOLATIONS THEREOF.

SEC. 1. Each active member shall pay an initiation fee of five dollars, which, with signing the constitution, or acceptance of membership, shall entitle him to a certificate of membership of the society.

SEC. 2. There shall be an annual assessment of, and members shall be required to pay four dollars, unless otherwise regulated by the society. But any member may commute such annual assessment by the payment of thirty-five dollars at one time, which shall exempt him from annual assessments for life, although he shall still be liable for his quota as a member for any extraordinary assessment which the society may think proper to order.

SEC. 3. Any active member who shall neglect to pay his dues or assessments for six months shall be notified of the fact by the treasurer; and should he for three months after such notice neglect or refuse to pay, a penalty of ten per cent. shall be added to his said dues, and the same be

collected therewith ; and upon his continued refusal to so pay, his name shall be stricken from the roll of members of the society in one month thereafter.

SEC. 4. The ethical rules of the society shall be the same as those governing the medical and legal professions generally.

SEC. 5. Charges against members shall be made in writing, enclosed in a sealed envelope, and referred to the executive committee under such seal.

SEC. 6. In case of charges being so made, and the committee shall think that the charges are of so grave a nature as to require an answer thereto, copies of the same, under seal, shall be served upon the accused, and he shall be cited to appear before the said executive committee, and required to answer the said charges, at a meeting to be held not less than fifteen days from the time of serving such notice ; and such member may be suspended from his rights as a member, pending such examination by said executive committee.

SEC. 7. After due examination, the said committee may acquit, admonish, or recommend the expulsion of such delinquent ; or it may suspend him from a participation of the privileges of the society for a period of not exceeding three months thereupon.

SEC. 8. If the committee shall think the member ought to be expelled from the society, it shall be its duty to report the charges, and the evidence supporting the same, to the society, for action thereupon.

ARTICLE IV.

THE PUBLISHING COMMITTEE.

SEC. 1. All papers read before the society shall be referred to the Committee on Publication, consisting of the president, secretary and librarian, for consideration as to their merits for the advancement of Medico-Legal science, with power to publish the same, if they shall consider the same proper, for the information of the members of the society.

ARTICLE V.

TIME OF ELECTIONS—VACANCIES.

SEC. 1. The annual meeting for the election of officers and trustees shall be held in December in each year, and the election shall be made by ballot at the said December meeting, nominations having been made therefor at the preceding stated meetings as follows : The assistant secretary shall, at least two weeks before the annual meeting, forward by mail to every member entitled to vote and not in arrears for dues, a membership list with a list of members and a ticket printed in blank for the various offices to be filled, also a blank envelope addressed to the assistant secretary.

Members entitled to vote shall fill up the blank ballot and return the same to the Assistant Secretary by mail or otherwise under seal.

At the annual meeting the assistant secretary shall deliver the said envelopes to three tellers to be named by the president, who shall proceed at once, in the presence of the society, to count the votes of the said ballots and announce the result to the society. Each election list and envelope sent shall be separately numbered and a duplicate list kept by the assistant secretary.

In case no choice is made by the said vote, counted and announced by the tellers for any office, the same shall be filled by a vote by the society, by ballot.

Any member shall be entitled to receive his election list and vote at any time before the polls are actually closed, on payment of all arrears or dues, if in good standing.

SEC. 2. Vacancies can be filled at any time by a special election, at any stated meeting, nominations having been made and announced in the same manner as required for annual elections.

SEC. 3. At the meeting next succeeding the annual meeting, no business shall be transacted except the reading of the minutes, the report of the Executive Committee, the election of proposed members, and the addresses of the retiring and newly-elected presidents, unless the Society shall otherwise order.

ARTICLE VI.

ORDER OF BUSINESS.

SEC. 1. At the meetings of the society the following shall be the order of business:—

1. Calling the meeting to order.
2. Reading the minutes.
3. Payment of dues, fees and fines.
4. Reports of Executive Committee, and election of proposed members.
5. Reports of Special Committees.
6. Reports of Permanent Commission.
7. Reading the Paper of the evening.
8. New business.
9. Unfinished business.
10. Adjournment.

SEC. 2. In relation to the order in which business shall be conducted in the society, the following shall be the order of precedence in which the same shall be presented by the president for consideration.

1. Motion to adjourn.
2. Motion to lay on the table.
3. Motion for the previous question
4. Motion to postpone to a day certain.
5. Motion to send to a committee.
6. Motion to amend.
7. Motion to postpone indefinitely.
8. Motion for special business.
9. Motion concerning questions of order.
10. Motion to suspend the rules.

SEC. 3. The said respective motions shall be submitted for the consideration of the society, and each shall have precedence before all motions submitted prior thereto, in the numerical order hereinbefore specified; and the same shall be considered in their proper order, in the manner usual to deliberative societies.

ARTICLE VII.

SUSPENDING AND AMENDING BY-LAWS.

SEC. 1. Two-thirds of all the votes cast at a stated meeting of the society shall be sufficient to suspend the By-Laws.

SEC. 2. For their amendment the same rule and the same vote shall be required as for amendments to the Constitution.

Any person contributing \$500 in Money, Books or Library Furniture, shall be declared a *Founder of the Library*. \$250 thus contributed shall constitute the donor a *Patron of the Library*.

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THE PERMANENT COMMISSION.

The society, at a meeting held February 16, 1876, unanimously adopted the following resolution, establishing a Permanent Commission:—

RESOLUTION.

SEC. 1. There shall be established a Permanent Commission, consisting of the president and six members, to be elected by the society, upon the recommendation of the Executive Committee, chosen equally from the Medical and Legal professions. At the first election two members shall be chosen for three years, two for two years, and two for one year; and thereafter two members annually for the term of three years.

SEC. 2. The Permanent Commission is charged with the duty of receiving all cases, questions, or demands for advice that may arise between the regular meetings of the Society, and of acting upon them as speedily as possible.

SEC. 3. Five members shall constitute a quorum; and a majority of those present shall decide upon what report or answer to make to cases, questions or demands submitted.

SEC. 4. Cases, questions, or demands shall be addressed to the president of the society, who shall thereupon call the Commission together as soon as practicable.

SEC. 5. The Permanent Commission shall report as soon as practicable, directly to the person, officer, or authority making a demand or submitting a case or question, and also to the society at its next ensuing meeting.

SEC. 6. The report or opinion of the Commission shall not bind the society, but are subject by a vote of the society, to be either rejected, modified or confirmed.

SEC. 7. The Commission shall elect their own chairman and secretary, and the secretary shall keep a record of the proceedings of the Commission.

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ERRATA.

- Page 74, 3 lines from bottom, for ven cova, read *vena cava*.
 “ 110, 7 lines from bottom, for the rewas, read *there was*.
 “ 111, 10 lines from bottom, for territories, read *territories*.
 “ 117, 8 lines from bottom, for gul read *gulf*.
 “ 193, 8 lines from top, for osiuteri read *os uteri*.
 “ 193, 7 lines from bottom, for luteam read *luteum*.
 “ 280, 5 lines from bottom, for se lfexciting read *self exciting*.
 “ 327, 2 lines from bottom, for genral read *general*.
 “ 342, 15 lines from top, for cost read *cast*.
 “ 342, 16 lines from top, for trochea read *trachea*.
 “ 376, 8 lines from bottom, for September read *November*.
 “ 418, 7 lines from top, for thory read *theory*.
 “ 442, 17 lines from bottom, for confssses read *confesses*.
 “ 442, 10 lines from bottom, for sone read *some*.
 “ 472, 2 lines from top, insert *Jordan, Esq.*, after Daniel.

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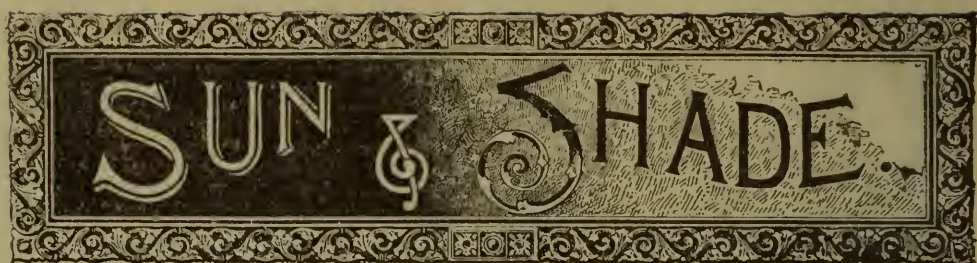
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